

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1949

No. 309

**INTERNATIONAL BROTHERHOOD OF TEAM-
STERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS UNION, LOCAL 309, ET AL.,
PETITIONERS,**

vs.

**A. E. HANKE, L. J. HANKE, R. R. HANKE, AND R. M.
HANKE, COPARTNERS, D. B. A. ATLAS AUTO
REBUILD**

**ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE
OF WASHINGTON**

PETITION FOR CERTIORARI FILED SEPTEMBER 2, 1949.

CERTIORARI GRANTED DECEMBER 19, 1949.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No.

INTERNATIONAL BROTHERHOOD OF TEAM-
STERS, CHAUFFEURS, WAREHOUSEMEN AND
HELPERS UNION, LOCAL 309, ET AL., PETI-
TIONERS,

vs.

A. E. HANKE, L. J. HANKE, R. R. HANKE, ET AL.,
ETC.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT
OF THE STATE OF WASHINGTON

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[fol. 1]

**IN THE SUPERIOR COURT OF THE STATE OF
WASHINGTON FOR KING COUNTY**

A. E. HANKE, L. J. HANKE, C. R. HANKE and R. M. HANKE,
copartners doing business under the name and style of
ATLAS AUTO REBUILD, plaintiffs.

vs.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN and HELPERS UNION, LOCAL 309, DICK
KLINGE, its business agent, and MEL ANDREWS, its secretary,
defendants.

COMPLAINT—Filed February 24, 1948.

For a cause of action, plaintiffs allege:

1. That plaintiffs, A. E., L. J., C. R. and R. M. Hanke are copartners doing business under the name and style of Atlas Auto Rebuild, at 800 Rainier Avenue, Seattle, Washington; that plaintiffs have filed in the Clerk's Office of King County, Washington, a certificate of their trade name.

2. That the defendant is an organized Trade Union with its principal place of business in Seattle, Washington, and Dick Klinge is its Business Agent and Mel Andrews its Secretary.

3. That plaintiffs, so doing business under the Trade Name and style of Atlas Auto Rebuild, are brothers and do not now, and have not employed any workmen in said plant, and do all the work therein themselves, and share equally in such profits as are made. That there is not now, nor has there been any labor dispute in said plant, or any dispute regarding wages, hours or conditions of employment, and they have no employee, and particularly no member of Defendant Union is employed by plaintiffs.

4. That commencing with the 12th day of February, 1948, defendant has caused plaintiffs' business at the location [fol. 2] above stated to be picketed.

That the purpose of said picketing is to coerce plaintiffs to join a Union against their will, and to operate as a Union

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shop, and to ruin plaintiffs' business unless they join said Union; and defendants deliberately and maliciously, and by implied threats and intimidations, have prevented and are now preventing plaintiffs' customers from entering their place of business, and are thus damaging and will destroy their business unless restrained.

5. That as a result of such picketing, plaintiffs are now suffering irreparable injury and damage to their business, in loss of profits, which damages are difficult of proof, and plaintiffs have no plain, speedy or adequate remedy at law.

6. That an emergency exists and unless restrained, the defendant Union and its members and officers will continue to damage and unreasonably interfere with said business of plaintiff by said picketing, and a restraining order should be issued immediately, preventing the defendants from further picketing and interfering with or molesting the business or property of plaintiffs, or in any way injuring their said business.

7. That the plaintiffs are entitled to an immediate temporary and preliminary injunction, pending the hearing herein, and the final disposition of the cause; and to a temporary or preliminary injunction restraining the defendant and its members and officers, and each of them, either directly or indirectly, from in any manner molesting or interfering with the business of the plaintiffs, and that said temporary injunction be granted and remain permanent upon trial of this cause.

8. That the plaintiffs have been damaged in a large sum, the exact amount of which is at the present time undeterminable; that this damage will continue to increase unless defendants are restrained.

Wherefore, plaintiffs pray for judgment against defendants as follows:

[fol. 3] (1) For the immediate issuance, without notice, of a temporary restraining order herein, preventing the defendants, either directly or indirectly, from in any way interfering with, molesting, or damaging the business of the plaintiffs, by picketing or otherwise, pending plaintiffs' application for temporary restraining order.

(2) For a temporary restraining order herein preventing the defendants, either directly or indirectly, from in

any way interfering with, molesting or damaging the business of the plaintiffs by picketing or otherwise.

(3) That a permanent injunction be granted herein restraining the defendants from in any way interfering with, molesting or damaging the business of the plaintiffs by picketing or otherwise.

(4) That plaintiffs recover from defendants their damages in such amount as may be determined to be proper.

(5) That the plaintiffs recover their costs and disbursements herein.

(6) That such other, further and different relief be given as may be proper in the premises.

J. Will Jones, Clarence L. Gere, H. C. Vinton, Its Attorneys.

Duly sworn to by L. J. Hanke. Jurat omitted in printing.

[fol. 4] IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON, FOR KING COUNTY

[Title omitted]

AFFIDAVIT OF L. J. HANKE, IN SUPPORT OF COMPLAINT

STATE OF WASHINGTON,
County of King, ss:

L. J. Hanke, being first duly sworn on oath, deposes and says: That he is one of the four partners, plaintiffs doing business under the name and style of Atlas Auto Rebuild, and makes this affidavit in support of the motion of the plaintiffs for a temporary restraining order against the defendants.

That the defendants are picketing and causing the business of the plaintiffs to be picketed, as alleged in their complaint, which by reference is made a part of this affidavit, as fully as though set forth herein in full.

That plaintiffs do not belong to any union and they employ no one whatsoever, and no labor controversy exists, and said picketing of plaintiffs place of business is carried on by defendants for the purpose and with the intention of

coercing plaintiffs to join defendants union or some union and to operate as a union shop.

That defendants are deliberately, by implied threats and intimidations, and by picketing and otherwise, seeking to prevent and is now preventing plaintiffs' customers from entering their place of business, with the result that plaintiffs' business is being gravely injured and interfered with and before long it will be destroyed, and already plaintiffs are suffering irreparable injury and damage and against the course of conduct of defendants toward them and the damage done by said picketing, plaintiffs have no plain, speedy or adequate remedy at law, and any judgment which might be secured by way of damages could not be collected, and they are without notice entitled to a temporary restraining order, restraining the defendants and said pickets from further picketing or interfering with plaintiffs' business pending the hearing of the cause herein, and for a temporary restraining order after notice, and for a permanent injunction enjoining defendants from in any way, directly or indirectly, interfering with the business of the plaintiffs, by picketing or otherwise.

L. J. Hauke.

Subscribed and sworn to before me this 20th day of February, 1948. H. C. Vinton, Notary Public in and for the State of Washington, Residing at Seattle.

Filed in Clerk's Office, Supreme Court State of Washington, August 5, 1948.

Benj. T. Hart, Clerk.

[fol. 5] IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON, FOR KING COUNTY

RESTRAINING ORDER AND ORDER TO SHOW CAUSE—February 24, 1948

The above entitled matter coming on regularly to be heard this day, in open court, before the undersigned, one of the Judges of the above entitled court, on motion of the plaintiffs and their affidavit and complaint herein for a temporary restraining order without notice and order to

show cause, fixing the time for hearing their motion for temporary injunction against the defendant, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers Union, Local 309, of Seattle, Washington, an organized trade union; and:

It appearing that the plaintiffs' business will be irreparably damaged unless an immediate temporary restraining order, without notice, be issued; and

The Court being fully advised in the premises, now, therefore,

It is ordered, adjudged and decreed:

That the defendant, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers Union, Local 309, of Seattle, Washington, an organized trade union, be and it is hereby restrained, pending a hearing on the application of the plaintiffs for a temporary restraining order of this court, from in any manner interfering with, molesting or injuring their business, carried on under the name of Atlas Auto Rebuild, at 800 Rainier Avenue, in Seattle, by picketing or in any manner, either directly or indirectly, further damaging the business of the [fol. 6] plaintiffs.

It is further ordered, adjudged and decreed:

That the defendants above named be and appear before the Department of the Presiding Judge, Room 915 of the King County Court-House, Seattle, Washington, at the hour of 9.30 A. M., on the 2nd day of March, 1948; and to remain in attendance, and to report to the department to which this matter may be assigned until hearing thereof, and to show cause if any it has why a temporary restraining order should not issue pending the trial of this cause and prohibiting the defendants from picketing the business of plaintiffs or from interfering with, molesting or injuring the business or property of the plaintiffs, either directly or indirectly.

It Is Further Ordered: That before said temporary restraining order shall become effective, the plaintiffs shall execute a proper bond to the defendant in the sum of \$1,000.

Done in Open Court This 24th Day of February, 1948.

James T. Lawler, Judge

Presented by J. Will Jones, Attorney for Plaintiffs.

[File endorsement omitted.]

[fols. 7-8] Injunction Bond for \$1,000 approved and filed February 24, 1948, omitted in printing.

[fol. 9] IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON,
FOR KING COUNTY

[Title omitted]

MOTION TO DISSOLVE TEMPORARY RESTRAINING ORDER—Filed
March 2, 1948

The above named defendants move the court for an order dissolving the temporary restraining order which was issued herein on the 24th day of February, 1948, on the ground and for the reason that the advertising thereby restrained deprives said defendants of their right of freedom of speech guaranteed by the First and Fourteenth Amendments to the Constitution of the United States.

This motion is based upon the files and records herein and upon the affidavit of Dick Klinge, which is attached hereto and made a part hereof by this reference.

Bassett & Geisness, Attorneys for Defendants.

Cop. Rec. 3-2-48.

J. Will Jones, Clarence L. Gere, Attys. for Plfs.

[File endorsement omitted.]

[fol. 10] IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON,
FOR KING COUNTY

[Title omitted]

AFFIDAVIT OF DICK KLINGE—In Support of Motion

STATE OF WASHINGTON,
County of King, ss:

Dick Klinge, being first duly sworn, on oath deposes and says:

That he is the Business Agent of the International Brotherhood of Teamsters, Chauffeurs and Helpers, Local No. 309, and makes this affidavit in support of defendants'

motion to dissolve the restraining order herein and in response to the order to show cause which was issued herein on the 24th day of February, 1948.

Affiant denies each and every allegation of the plaintiffs' complaint and each and every allegation of the affidavit of plaintiff L. J. Hanke filed herein in support of the motion for said temporary restraining order, except as expressly admitted herein.

Affiant says that between June 22, 1946, and January 27, 1948, the plaintiff A. E. Hanke was a member of the defendant Union and during all of that time he and the plaintiff co-partnership enjoyed the benefit of membership in said Union and the business derived from said membership; [fol. 11] that during the entire period just mentioned the plaintiffs enjoyed the benefits derived from the use of the Union's shop card which they prominently displayed in the window of their place of business to attract the patronage of members of other unions affiliated with the defendant Union in the International Brotherhood of Teamsters and the American Federation of Labor; that in addition to the use and benefit of said shop card the plaintiffs, during said period, enjoyed the benefit of advertisements which the defendant Union caused to be printed in the "Washington Teamster"—the official publication of the Joint Council of Teamsters No. 28—which is published weekly and distributed to all members of the International Brotherhood of Teamsters throughout the State of Washington and that, as a result of the use of said shop card and of said advertising, the plaintiffs have received a substantial amount of union patronage which otherwise they would not have received. That the membership of defendant Union consists of persons employed in the Seattle area engaged in the automobile service station business.

That Local No. 882 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers Union is closely affiliated with the defendant Union in said Brotherhood of Teamsters and its membership is comprised of persons employed in the Seattle area, engaged in the business of selling used as well as new automobiles.

That on or about the 12th day of January, 1948, affiant received a complaint from the Secretary of said Local No. 882 to the effect that the plaintiffs were engaged in the busi-

ness of selling used automobiles in addition to their regular business of operating an automobile service station and in the sale of such automobiles the plaintiffs did not employ any members of said Union and were selling automobiles in competition with the members thereof and were not con-[fol. 12] forming to said Union's working conditions; that the members of said Union in the sale of said automobiles are not permitted to work on Saturdays or Sundays and before 8.00 A. M. or after 6.00 P. M. on other days of the week; that the plaintiffs, in competing with the members of said Union, were selling automobiles on Saturdays and Sundays and after 6.00 P. M.; that, having investigated the matter, affiant went to plaintiffs' place of business on the 27th day of January, 1948, and advised them that if they continued to sell automobiles contrary to the established union working conditions with which conditions all automobile dealers in the Seattle area are conforming by reason of contracts which said Union has with said dealers, Local No. 309, by reason of its affiliation with said Local 882, would be required to remove its shop card from plaintiffs' place of business and discontinue the aforesaid advertising of plaintiffs' business in the "Washington Teamster" and advise all members of Teamster Unions in the Seattle area that the plaintiffs were no longer operating a union shop, whereupon the plaintiffs removed said union shop card from their window and delivered it to the affiant, informing him, in substance, that they could get along very well without it and the support of the Teamsters Union and Organized Labor. That thereafter the defendant Union ceased to publish in the "Washington Teamster" that the plaintiffs were operating a Union shop, and on or about the 12th day of February, 1948, caused a single person wearing a sandwich sign to walk along the sidewalk in front of and near the plaintiffs' place of business; said sign bearing the legend "Union People Look for the Union Shop Card" and a facsimile of the Union Shop card which had formerly been on display in the plaintiffs' window; that said person neither spoke to nor in any way interfered with any person seeking to enter or leave the plaintiffs' place of business and said advertising of defendants' union shop card was entirely peaceful and con-

[fol. 13] tinued until restrained by the court on the 24th day of February, 1948.

Dick Klinge.

Subscribed and sworn to before me this 27th day of February, 1948. Samuel B. Bassett, Notary Public in and for the State of Washington, Residing at Seattle.

Copy Rec. 3-2-'48.

J. Will Jones, Clarence L. Gere, Attys. for Plfs.

[File endorsement omitted.]

[fol. 14] IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON, FOR KING COUNTY
[Title omitted]

TEMPORARY INJUNCTION—March 6, 1948

The above entitled cause having come regularly on for hearing on the 2nd day of March, 1948, before the Honorable Donald A. McDonald; one of the Judges of the above entitled Court, in response to the restraining order and order to show cause which was entered herein on the 24th day of February, 1948, and upon the defendants' motion to dissolve said temporary restraining order; the plaintiffs appearing in person and by J. Will Jones, Clarence L. Gere and H. C. Vinton, their attorneys; the defendants appearing by Bassett & Geisness, their attorneys; and the Court having heard and considered the files and records herein and the testimony introduced by the parties, having heard and considered the arguments of counsel and on the 9th day of March, 1948, having filed its memorandum opinion and having made findings of fact and conclusions of law and being now fully advised in the premises, it is, therefore,

Ordered, Adjudged and Decreed that the defendants' motion to dissolve the temporary restraining order heretofore issued herein be and the same is hereby denied.

It Is Further Ordered, Adjudged and Decreed that the defendants, and each of them, be and they are hereby re-

strained, pendente lite, from in any manner picketing the plaintiffs' place of business,
[fol. 15] And it Is Further Ordered that the bond of the plaintiffs now on file shall be and remain on file as sufficient bond for the issuance of this temporary injunction.

Done in Open Court this 6th day of March, 1948.

Donald A. McDonald, Judge.

Copy received this 24th day of March, 1948.

J. Will Jones & Clarence L. Gere, Attorneys for the Plaintiffs.

Presented by S. B. Bassett, of Counsel for Defendants.

Ent'd 10 18 DNR

Norman R. Riddell, Clerk, King County, Wash.

[fol. 16] IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON, FOR KING COUNTY

A. E. HANKE, L. J. HANKE, R. R. HANKE and R. M. HANKE,
copartners doing business under the name and style of
ATLAS AUTO REBUILD, Plaintiffs.

vs.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS UNION, LOCAL 309, et al,
Defendants

FINDINGS OF FACT AND CONCLUSIONS OF LAW—March 6, 1948

The above entitled cause having come regularly on for hearing on the 2nd day of March, 1948, before the Honorable Donald A. McDonald, one of the Judges of the above entitled Court, in response to the restraining order and order to show cause which was entered herein on the 24th day of February, 1948, and upon the defendants' motion to dissolve said temporary restraining order; the plaintiffs appearing in person and by J. Will Jones, Clarence L. Gere and H. C. Vinton, their attorneys; the defendants appearing by Bassett & Geisness, their attorneys; and the Court having heard and considered the files and records herein and the testimony introduced by the parties and

having heard and considered the arguments of counsel, and on the 9th day of March, 1948, having filed its memorandum opinion and being now fully advised in the premises, makes the following

FINDINGS OF FACT

I

During all of the times herein mentioned the plaintiffs were and still are copartners engaged in the business of repairing automobiles, dispensing gasoline and automobile accessories and in the sale of used automobiles under the [fol. 17] firm name and style of Atlas Auto Rebuild, their place of business being located at 800 Rainier Avenue, Seattle, Washington; and that they have filed with the County Clerk of King County their certificate of assumed business name.

II

That the defendant Teamsters Union Local 309 is a voluntary association organized as a labor union, chartered by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, affiliated with the American Federation of Labor, and embraces among its membership persons employed and engaged in the gasoline service station business in Seattle, Washington, and the defendants Mel Andrews and Dick Klinge are, respectively, its secretary and business agent.

III

That Local Union No. 882 is also a voluntary association organized as a labor union, chartered by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and is closely affiliated with the defendant Teamsters Union Local 309, embracing among its membership persons employed and engaged in the business of selling used automobiles in the Seattle area.

IV

That in the month of June, 1946, the plaintiff A. E. Hanke purchased the aforesaid business and formed said copartnership with his sons, L. J. Hanke, C. R. Hanke and R. M. Hanke. That for a long time prior thereto said business had been operated as a union shop and had on display

in its show window the union shop card of the defendant Union; that upon purchasing said business the plaintiff A. E. Hanke became a member of the defendant Union and as a result said Union permitted him to continue to display said union shop card as before; and thereafter until January 27, 1948, the plaintiff A. E. Hanke continued his membership in the defendant Union and during all of that time [fol. 18] the plaintiffs enjoyed the use of the union shop card which they prominently displayed in the window of their business to attract the patronage of members and friends of organized labor. That said shop card consisted of a metal sign, eleven inches by seven inches, bearing the insignia of the Teamsters Union, with the following wording thereon:

"UNION SERVICE

**INTERNATIONAL
BROTHERHOOD
of TEAMSTERS
CHAUFFEURS**

**WAREHOUSEMEN
AND HELPERS
OF
AMERICA**

-(insignia)

Affiliated with A. F. of L.

152309

Daniel J. Tobin,
General President

John M. Gillespie,
Gen'l Sec'y-Treasurer

"This is the property of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America."

That in addition to the use and benefit of said shop card the plaintiffs, during all of the time they operated said business, enjoyed the benefit of advertisements which the defendant Union caused to be printed in "THE WASHINGTON TEAMSTER"—the official publication of the Teamsters Union, which is published weekly and distributed to all of the members of the International Brotherhood of Teamsters throughout the State of Washington, and that as a result of the use of said shop card and of said advertising the plaintiffs received a substantial amount of the Union patronage which they otherwise would not have received.

V

That although the plaintiffs, during the first few months of their operation of said business, did employ some sheet metal workers who were members of the Sheet Metal Workers Union, they have not since and do not now employ any person, they themselves performing all the work involved in the operation of their business.

VI

That until the termination of the Office of Price Administration [fol. 19] the plaintiffs had conducted the business of auto repairing, auto rebuilding and operating a gasoline station. With the ending of the Office of Price Administration in June, 1946, they added the buying and selling of used cars to their business. That on or about June 12, 1946, said Local Union No. 882 entered into a collective bargaining contract with the Independent Automobile Dealers Association of Seattle, the first clause of which reads as follows:

"1. That all show rooms and used car lots will close not later than 6:00 p.m. on all week days and shall be closed on Saturdays and Sundays and the following holidays: New Year's Day, Washington's Birthday, Memorial Day, Fourth of July, Labor Day, Armistice Day, Thanksgiving Day and Christmas Day or days observed as such holidays. Each dealer agrees to place in a prominent place on his used car lot or building, a conspicuous sign reading 'Closed Saturdays, Sundays and Holidays.' These provisions relating to closing shall not apply during the general automobile show or used car show sponsored by the Association. Saturday and Sunday work will be permissible on such Saturdays and Sundays as are mutually agreed upon between the Association and the Union."

That said agreement covers one hundred and fifteen used car dealers in the Seattle area and all except ten of them are their own operators and have no employees. That the plaintiffs, entirely disregarding the above quoted paragraph of the agreement between the Automobile Salesmen's Union and the Independent Automobile Dealers' Association, sold cars on Sundays, Saturdays, holidays and after six o'clock in the evening.

VII

That at all times up until the 27th day of January, 1948, the above described union shop card was kept on display in the place of business of plaintiffs, and in the weekly publication known as "The Washington Teamster" there appeared the following under a large heading: "Patronize these firms; protect jobs for union Teamsters"; and in smaller type underneath the above: "Here's a list of places displaying the Teamsters' shop card in the Seattle district and where automotive service, gasoline and parking may be obtained." Beneath these headlines are [fol. 20] subheads in which the city is divided into different districts, and under the subhead "Industrial Area; South & W. Seattle" appears, among a long list of others, the name of the "Atlas Auto Rebuild, 800 Rainier". These insertions appeared in said paper up to and including the 30th day of January, 1948.

VIII

That on the 27th day of January, 1948, the defendant Dick Klinge and one E. W. Marshall, who was the business agent for Teamsters Local No. 882, (the Automobile Salesmen's Union) having had complaints against the plaintiffs for violation in regard to the hours referred to in the agreement between the Dealers and said Local No. 882, went to the place of business of the plaintiffs and there conferred with all four of the partners. They did not insist on the plaintiffs becoming members of said Local 882 or the defendant Local No. 309, but merely protested as to their violation of the clause of the agreement above quoted. The said interview lasted about one-half hour, during which said Klinge and Marshall informed the plaintiffs that the Unions would have to remove said Union shop card on display in plaintiffs' shop unless the plaintiffs agreed to abide by and conform to the provisions of the clause of the agreement between the Dealers and the Union concerning working hours, in the display and sale of used cars. This the plaintiffs refused to do, and invited said representatives of said Unions to remove said Union shop card, which they did. At this time (January 27, 1948) A. E. Hanke was not a member in good standing of defendant Local No. 309, having failed to pay his dues for ninety days,

but under the by-laws of said Union he could reinstate himself upon paying all delinquent dues plus 50c. for each month. The Union had not suspended him for non-payment of dues, but he informed said Union representatives at that time that he would not reinstate his membership.

IX

Thereafter, on the 12th day of February, 1948, a single [fol. 21] picket appeared in front of plaintiffs' place of business, which is located on a street corner. He carried the familiar "sandwich sign" which read the same in front and in back as follows in large letters: "Union People Look for the" and then a facsimile of the shop card and underneath it the words: "Union Shop Card". This picket patrolled up and down in front of the plaintiffs' place of business, talking to people who entered, and took down the motor vehicle license numbers on automobiles of plaintiffs' patrons. Immediately thereafter plaintiffs' business fell off, and drivers for supply houses refused to deliver parts and other materials to the plaintiffs, and they were required, in order to get materials, to go to the dealers in their own truck and secure such materials as they needed in the carrying on of their business. This single picket walked on both sides of the building between the hours of 8:30 a.m. and 5:00 p.m., until restrained by the court, without notice, on February 24, 1948. Said picketing was entirely peaceful, the picket neither threatening nor molesting anyone seeking to enter or leave plaintiffs' place of business.

From the foregoing findings of fact the Court makes the following

CONCLUSIONS OF LAW

I

That the Court has jurisdiction of the parties to and subject matter of this action.

II

That no labor dispute exists within the meaning of the laws of the State of Washington and said picketing is, therefore, unlawful, and the plaintiffs are entitled to an injunction, pendente lite, restraining and enjoining the same

and, accordingly, the defendants' motion to dissolve the temporary restraining order heretofore issued should be denied.

[fol. 22]

III

That said picketing was coercive and, therefore, an injunction forbidding the same would not infringe the defendants' right of freedom of speech guaranteed by the First and Fourteenth Amendments to the Constitution of the United States.

Done in Open Court this 6th day of March, 1948.

DONALD A. McDONALD, Judge.

Copy received this 24th day of March, 1948.

J. Will Jones & Clarence L. Gere, Attorneys for
Plaintiffs.

Presented by: S. B. Bassett, Counsel for Defendants.

Filed 1948 APR 6 AM 10 18

Norman R. Riddell, Clerk, King County, Wash.

[fol. 23]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON,
FOR KING COUNTY

A. E. HANKE, L. J. HANKE, R. R. HANKE and R. M. HANKE,
copartners doing business under the name and style of
ATLAS AUTO REBUILD, Plaintiffs.

vs.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS UNION, LOCAL 309, and
DICK KLINGE, its Business Agent, and MEL ANDREWS, its
Secretary, Defendants.

DECREE—May 19, 1948

The above entitled cause having come on regularly for trial on the merits on the 15th day of April, 1948, before the Honorable Donald A. McDonald, one of the Judges of the above entitled Court, plaintiffs appearing in person

and by J. Will Jones, Clarence L. Gere and H. C. Vinton, their attorneys; the defendants appearing by Samuel B. Bassett and John Geisness, their attorneys; and the parties, through their counsel, having stipulated in open court that the cause be submitted to the court for final judgment on the merits on the testimony heretofore taken on plaintiffs' application for a temporary injunction and the arguments submitted, and having further stipulated that the plaintiffs have sustained damages in the amount of \$250.00 as a result of the picketing of plaintiffs' premises between February 12 and February 24, 1948; and the court having reconsidered the evidence introduced by the parties on plaintiffs' application for a temporary injunction; and having reconsidered and reaffirmed the memorandum opinion filed herein on the 9th day of March, 1948, following hearing on the application for a temporary injunction, and the findings of fact and conclusions of law made and entered [fol. 24] [Vol. 1310 page 680] on April 6, 1948, pursuant to said memorandum opinion, and being now fully advised in the premises, it is, therefore,

Ordered, Adjudged and Decreed that the defendants, and each of them, be and they are hereby permanently restrained and enjoined from in any manner picketing the plaintiffs' place of business and that the plaintiffs have judgment against the defendants, and each of them, in the sum of \$250.00, together with the costs and disbursements of this action, to all of which the defendants except and their exception is hereby allowed.

Done in Open Court this 19 day of May, 1948.

DONALD A. McDONALD, Judge.

Approved as to form:

J. Will Jones, Attorneys for Plaintiffs.

Bassett & Geisness, Attorneys for Defendants.

[File endorsement omitted]

[fol. 25] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

[Title omitted]

NOTICE OF APPEAL—June 8, 1948

[fol. 26]

SUPERSEDEAS AND COST BOND ON APPEAL
for \$250.00 Omitted in Printing

[fol. 27]

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

No. 30738. En Banc

A. E. HANKE, L. J. HANKE, R. R. HANKE, and R. M. HANKE,
copartners doing business under the name and style of
ATLAS AUTO REBUILD, Respondents.

v.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS UNION, LOCAL 309, and
DICK KLINGE, its Business Agent, and MEL ANDREWS, its
Secretary, Appellants.

OPINION—June 2, 1949

This action was instituted by the plaintiffs to enjoin the defendant union and its representatives from further picketing the plaintiffs' business establishment and to recover damages for the financial loss alleged to have been sustained by the plaintiffs as the result of prior picketing by the defendants.

On the basis of the allegations in the complaint, together with facts set forth in the supporting affidavit of one of the plaintiffs, the trial court immediately and without notice issued a restraining order and order to show cause, temporarily prohibiting the defendant union from interfering with, molesting, or injuring the plaintiffs' business by picketing or by any other means, and directing all of the

defendants to show cause why a temporary injunction of the same prohibitory effect, *pendente lite*, should not issue.

The defendants seasonably appeared and filed a motion to dissolve the temporary restraining order, on the ground that the order previously issued by the court deprived the defendants of their right of freedom of speech as guaranteed by the first and fourteenth amendments to the constitution of the United States. Attached to and, by reference, made a part of the motion was the affidavit of the defendant business agent of the union, setting forth affirmatively the circumstances under which the picketing had been instituted and intimating the reasons why such activity on the part of the union should not be restrained.

Upon the hearing on the order to show cause and application for temporary injunction, oral testimony was taken covering all the issues in the case. At the conclusion of the evidence, followed by argument of counsel, the court took the matter under advisement and, thereafter, delivered its memorandum opinion, in which it reviewed the evidence at length and analyzed various judicial decisions bearing on the subject. Pursuant to its memorandum opinion, the trial court made findings of fact and conclusions of law and subsequently entered an order, in the form of a temporary injunction, denying defendants' motion to dissolve the prior temporary restraining order and decreeing that defendants be enjoined, *pendente lite*, from in any manner picketing the plaintiffs' place of business.

When the action came on later for trial on the merits, the parties stipulated that the cause be submitted to the court for final judgment upon the evidence theretofore introduced on plaintiffs' application for a temporary injunction, and further stipulated that the plaintiffs had sustained damages in the amount of two hundred fifty dollars, as the result of the picketing of their business establishment between the dates of February 12 and February 24, 1948.

The court thereupon entered a decree which reaffirmed its memorandum opinion and its findings of fact and conclusions of law, and ordered that the defendants be permanently enjoined from picketing the plaintiffs' place of business and that plaintiffs have judgment against the defendants, and each of them, in the sum of two hundred [fol. 29] fifty dollars, together with their costs and disbursements in action. Defendants appealed.

There is little, if any, dispute in the evidence. At the times with which we are here particularly concerned with respect to this litigation, respondents, A. E. Hanke and his three sons, L. J. Hanke, R. R. Hanke, and R. M. Hanke, were operating a copartnership business in the city of Seattle, under the firm name of Atlas Auto Rebuild. The father and two of the sons had purchased the business in June, 1946, at which time it included a station and plant for the repair and rebuilding of automobiles, and also a gas station. Shortly after completing that transaction, respondents added to their venture the business of selling used cars. The third son joined the firm in September, 1947.

The parties from whom the respondents acquired the original business had, during their term of operation, kept on display, in a window of the establishment, a teamsters' union shop card, issued to them by the appellant International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers Union, Local 309, which is affiliated with American Federation of Labor and which will hereinafter be referred to simply as Local 309 or as the local union. This shop card was made up of a metal sign, eleven inches by seven inches in size, bearing the insignia of the Brotherhood, and proclaiming that "Union Service" was to be had at that establishment. When respondents purchased the business, they retained the card, allowing it to remain in its accustomed place in the window until shortly before this controversy arose.

The parent union with which Local 309 is affiliated issues weekly in Seattle its official publication, known as the Washington Teamster, in which, under large attractive headings and subheadings, are listed the names of firms which carry teamster shop cards and for whose support [fol. 30] patronage is by the publication solicited. In this list the name of Atlas Auto Rebuild was included, up until the last week in January, 1948.

It appears that respondent A. E. Hanke, father of the other three respondents, had formerly been a member of a shipyard union, but, shortly after the purchase of the service and gas station above mentioned, had transferred his union membership to Local 309. So far as the record herein discloses, none of the respondent sons was ever a member of that local union.

During the first few months of their operation of the

business, respondents employed, in the rebuild department of the plant, two body men and a sheet metal worker who, although they were union members, did not belong to Local 309. Late in the fall of 1946, these employees were laid off and have never since been replaced. From that time until the dispute herein arose, in the early part of 1948, respondents have not hired any employees in the operation of any part of their business, but have themselves alone done all the work and labor connected therewith.

Although, as stated above, respondent A. E. Hanke was at one time affiliated with Local 309, he ceased to be a member thereof in January, 1948, by virtue of the fact that his union dues had been in arrears since the preceding September, and further because, on January 27, 1948, he had notified the union that he had no intention of seeking reinstatement. The affidavit of appellant Dick Klinge, business agent for Local 309, establishes the fact that the local union ceased to regard A. E. Hanke as a member after the date last mentioned.

While this action is waged directly between the respondents and Local 309 and its representatives, the actual dispute between them arose out of certain activities and demands stemming from another union, namely, Automobile Drivers and Demonstrators, Local Union No. 882, generally known as the Automobile Salesmen's Union. This particular union, which is also affiliated with American Federation of Labor and is chartered by International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, asserts jurisdiction over salesmen of new and used automobiles. Although the Automobile Salesmen's Union, Local 882, is separate and distinct from Local 309, the two are nevertheless closely related in interest.

It appears that on June 12, 1946, the Automobile Salesmen's Union, Local 882, entered into a working agreement with Independent Automobile Dealers Association, by the terms of which agreement all show rooms and used car lots were to close not later than six o'clock p.m. on all week days and were to remain closed on Saturdays, Sundays, and certain specified holidays. Of the 115 used car dealers covered by this agreement, all but ten operated their business without the aid of any hired employees. The respondents, however, were not members of the dealers' associa-

tion and did not conduct their business in accordance with that agreement. They kept open after six o'clock p.m. whenever it was considered necessary to do so in order to complete the work in hand, and they also sold used cars on Saturdays, Sundays, and holidays.

At some time prior to January 27, 1948, the appellant Local 309, which was a member of the parent teamsters organization, was notified by Local 882, which was affiliated with the same organization, that Atlas Auto Rebuild, of which the respondents were the sole owners, was selling used cars after six p.m. on week days and also at other times covered by the agreement previously entered into between Local 882 and Independent Automobile Dealers Association. As the result of this communication, representatives of the appellant Local 309 called upon the respondents at their place of business on the date last mentioned. The substance of the conversation that took place [fol. 32] at that time, as found by the trial court, is that the representatives of Local 309 demanded that respondents comply with the terms of the agreement entered into by and between Local 882 and Independent Automobile Dealers Association, or else suffer loss of the union shop card referred to above. Respondents, who were not members of the dealers association and were not represented in that agreement, firmly and emphatically replied that they could not, and would not, confine themselves to the shorter business hours and limited periods demanded by the union, for the reason that it would be impossible for them to continue in business under such restrictions. The union shop card was thereupon tendered to the representatives of the appellant local, who, upon their departure, took it with them. About that same time, the name of Atlas Auto Rebuild was deleted from the list of firms appearing in, and recommended by, the Washington Teamster, the official publication of the parent union organization.

On the morning of February 12, 1948, a single picket appeared in front of respondents' place of business, bearing a sandwich sign, upon which was printed in large letters, in both front and rear, the following legend: "Union People Look for the [facsimile of teamsters' shop card] Union Shop Card." This picket patrolled up and down in front of the respondents' place of business, between the hours of eight-thirty a.m. and five p.m., talking

to people who entered the place, and taking down the automobile license numbers of patrons of the respondents. The result of this picketing activity was that respondents' business immediately fell off very heavily; drivers for supply houses refused to deliver parts and other materials to the respondents; and, in order to obtain the materials necessary for the operation of their business, respondents were compelled to call for and transport the materials from the various supply houses in a truck furnished by themselves. Because of the situation thus created, this action was instituted.

[fol. 33] It will be borne in mind that, at the time the picketing was started by the appellants, the respondents had no hired help, but themselves did all the work connected with the operation of their business; that no member of their partnership was a member of either Local 309 or Local 882; that the partnership was not a member of the automobile dealers association; and that respondents had no agreement with any local union or anyone else relative to the manner in which their business was to be conducted.

The controlling question involved in this appeal is whether or not, under the facts of the instant case, the granting of injunctive relief by the trial court against the appellant union and its representatives violates the provision of the Federal constitution forbidding the abridgment of freedom of speech.

The factual situation in the case before us bears a close resemblance to that which obtained in the recent case of *Gazzam v. Building Service Employees International Union, Local 262*, reported in 29 Wn. (2d) 488, 188 P. (2d) 97. In fact, it seems to be agreed between the parties herein that, unless that case be now overruled, it is controlling of the case at bar. We shall therefore turn our attention to a consideration of the *Gazzam* case, *supra*.

The facts therein may be summarized as follows: The plaintiff, W. L. Gazzam, was the owner and operator of Enetai Inn, in Bremerton, comprising a hotel of one hundred rooms and seven adjacent cottages, adapted and used largely for the accommodation of transient guests. In his operation of the inn, plaintiff employed about fifteen persons, consisting of an engineer, a janitor, bell boys, clerks, and a housekeeper. None of the employees belonged to the union defendant in that action, and no dispute existed be-

tween the plaintiff and his employees regarding wages, hours, or conditions of employment.

Representatives of the union called on the plaintiff and [fol. 34] endeavored to have him enter into a contract which would require all of plaintiff's employees to join the union. Plaintiff stated that his answer to that request would depend upon the action of the people who were in his employ, but at the same time he gave the representatives permission to talk to those employees. Upon a second occasion, the representatives made the same request of the plaintiff, and the latter gave the same answer. Shortly thereafter, the central labor council of Bremerton wrote plaintiff a letter stating that, at the instance of the defendant union, a meeting was called and would be held to consider the matter of placing plaintiff's hotel on the "We do not patronize" list. Plaintiff, although invited to attend the meeting, did not personally appear, but was represented there by his attorney.

Following that meeting, plaintiff, at the request of the union, arranged another meeting to be had between the union representatives and the hotel employees. At that meeting, which also was not attended by the plaintiff, the representatives of the union talked to the employees, explained to them the benefits of union membership, and asked them to join their local. The employees, however, indicated that they did not desire to become members of the union. As a result of that action, the central labor council notified plaintiff that his hotel had been placed on the "We do not patronize" list.

Soon thereafter, the union "peacefully picketed" the plaintiff's place of business. Upon the institution of the picketing program, a laundry concern which had previously taken care of the plaintiff's laundry needs, and whose employees belonged to the defendant union, refused to do the required work for the plaintiff. He then attempted to do his laundry work with the aid of his own employees, but without success. The evidence established that the plaintiff suffered damages as the result of the picketing [fol. 35] by the defendant union.

The plaintiff thereupon brought suit to recover damages for the injury thus sustained by him and, further, to secure injunctive relief. The trial court granted the defendant's motion for nonsuit and dismissed the action. The plaintiff

appealed and, upon the appeal, contended that the sole purpose of the picketing and the listing as unfair was to compel him to coerce his employees to join the union against their will; he further contended that coercion is contrary to the public policy of this state, as declared in the labor disputes act, chapter 7, p. 10, Laws of 1933, Ex. Ses. (Rem. Rev. Stat. (Sup.), § 7612-2). The union, on the other hand, contended that picketing by a union, even though such union does not include in its membership any employees of the party picketed, is nevertheless legal.

In disposing of the appeal in that case, this court recognized that discrepancies had crept into some of our decisions affecting the question there involved, and for that reason the court assayed the task of reviewing the recent cases from this jurisdiction touching the subject of picketing. The list of cases thus analyzed consists of the following: *Safeway Stores v. Retail Clerks' Union, Local No. 148*, 184 Wash. 322, 51 P. (2d) 372; *Blanchard v. Golden Age Brewing Co.*, 188 Wash. 396, 63 P. (2d) 397; *Kimbel v. Lbr. & Sawmill Workers Union No. 2575*, 189 Wash. 416, 65 P. (2d) 1066; *Adams v. Building Service Employees International Union, Local No. 6*, 197 Wash. 242, 84 P. (2d) 1021; *Fornili v. Auto Mechanics' Union Local No. 297*, etc., 200 Wash. 283, 93 P. (2d) 422; *United Union Brewing Co. v. Beck*, 200 Wash. 474, 93 P. (2d) 772; *Yakima v. Gorham*, 200 Wash. 564, 94 P. (2d) 180; *Bloedel Donovan Lbr. Mills v. International Woodworkers of America, Local No. 46*, 4 Wn. (2d) 62, 102 P. (2d) 270; *Shively v. Garage Employees Local Union No. 44*, 6 Wn. (2d) 560, 108 P. [fol. 36] (2d) 354; *Edwards v. Teamster's Local Union No. 313*, 8 Wn. (2d) 492, 113 P. (2d) 28; *O'Neil v. Building Service Employees International Union, Local No. 6*, 9 Wn. (2d) 507, 115 P. (2d) 662, 137 A.L.R. 1102; *S & W Fine Foods v. Retail Delivery Drivers and Salesmen's Union, Local No. 353*, 11 Wn. (2d) 262, 118 P. (2d) 962; *Weyerhaeuser Tbr. Co. v. Everett Dist. Council of Lbr. & Sawmill Workers*, 11 Wn. (2d) 503, 119 P. (2d) 643; *State ex rel. Lbr. & Sawmill Workers v. Superior Court*, 24 Wn. (2d) 314, 164 P. (2d) 662, 166 A.L.R. 165; *Swenson v. Seattle Central Labor Council*, 27 Wn. (2d) 193, 177 P. (2d) 873, 470 A.L.R. 1082.

We make specific citation of these cases for the reason that in them will be found full and emphatic expression of

the various views entertained by the judges of this court upon this very vexed question.

After analysis and discussion of the cases above cited, this court, in the *Gazzam* case, *supra*, expressly overruled the *O'Neil* and *S & W Fine Foods* cases, *supra*, as being wrong in principle and contrary to the most recent view of a majority of the court.

The substance of our holding in the *Gazzam* case, *supra*, is, as was succinctly stated in the first headnote of the opinion, that peaceful picketing of an employer's place of business is not protected by the constitutional guaranty of free speech and is unlawful, where the employees are not members of the picketing union and the purpose of the picketing is to force the employees to join the union or to compel the employer to enter into a contract which would, in effect, compel his employees to become members of the union.

The facts in the instant case fall squarely within the inhibition of the holding of the *Gazzam* case. The purpose of the picketing in the present instance was (1), indirectly, to compel the respondents to become members of one or the other, or possibly both, of the two unions above mentioned; and (2), directly, to coerce the respondents to enter into an agreement under which they would carry on their business only during those hours and days arbitrarily fixed by the Automobile Salesmen's Union, Local 882.

We now find and here declare that the picketing activity conducted by Local 309, at the instance of Local 882, constituted coercion and was therefore unlawful. This conclusion is the view of the majority of this court as presently constituted, and therefore, without further comment thereon, we decline to overrule the *Gazzam* case, *supra*.

Appellants strenuously contend that our holding in the *Gazzam* case, *supra*, is in direct conflict with certain decisions of the United States supreme court and for that reason the *Gazzam* case should now be overruled. The decisions which appellants cite and on which they rely as supporting their contention are the following: *Senn v. Tile Layers Protective Union*, Local No. 5, 301 U.S. 468, 81 L. Ed. 1229, 57 S. Ct. 857; *Thornhill v. Alabama*, 310 U.S. 88, 84 L. Ed. 1093, 60 S. Ct. 736; *American Federation of Labor v. Swing*, 312 U.S. 321, 85 L. Ed. 855, 61 S. Ct. 568;

Bakery & Pastry Drivers & Helpers Local 802, etc. v. Wohl, 315 U.S. 769, 86 L. Ed. 1178, 62 S. Ct. 816; Cafeteria Employees Union, Local 302, v. Angelos, 320 U.S. 293, 88 L. Ed. 58, 64 S. Ct. 126.

Our view of the effect of those decisions does not coincide with that of the appellants.

We do not believe that the United States supreme court has ever held that the right of free speech is an absolute right, to be protected regardless of the deleterious effect so produced in regard to other interests also protected by the Federal constitution; nor do we believe that the United States supreme court has ever said that a state is without power to abridge this right where such a course is necessary to protect property rights and is in the general interests of the community.

[fol. 38]. In the case of *Shively v. Garage Employees Local Union No. 44*, 6 Wn. (2d) 560, 108 P. (2d) 354, we had occasion to consider the question whether the constitutional guaranty of freedom of speech, as interpreted by the United States supreme court, is an absolute right which may be exercised without qualification, or whether, like other rights, it must be exercised with reasonable regard for the conflicting rights of others. Many United States supreme court decisions were there considered and, after mature reflection, we expressed the view that the right of freedom of speech is not absolute. We quote a paragraph from that opinion:

"In the instant case, we are concerned with balancing appellants' [the employers'] right to carry on lawful businesses, free from unreasonable interference, and respondents' [picketing members of a union] right to freedom of speech. Neither of these rights is absolute, in the sense that it may be exercised in utter disregard of the other; both cannot be unqualifiedly exercised at the same time. It is within the power of the court to decide whether appellants should be denied their right to conduct their businesses free from unjustifiable interference by respondents, or whether respondents' right of freedom of speech should be reasonably limited."

One of the most recent pronouncements of the United States supreme court concerning the scope and limitations of the constitutional protection afforded the right of free

speech is contained in the case of *Kovacs v. Cooper*, 336 U.S. 77, 93 L. Ed. 379, 69 S. Ct. 448. The issue there involved was whether or not an ordinance of the city of Trenton, New Jersey, which forbade the use of sound-amplifying equipment emitting "loud and raucous noises" on the streets of Trenton was valid. The majority of the court, speaking through Mr. Justice Reed, held that the ordinance was constitutional, against the claim that it deprived the appellant therein of his right of freedom of speech as guaranteed by the fourteenth amendment, saying:

"A state or city may prohibit acts or things reasonably thought to bring evil or harm to its people." and, further:

[fol. 39] "Of course, even the fundamental rights of the Bill of Rights are not absolute. . . . To enforce freedom of speech in disregard of the rights of others would be harsh and arbitrary in itself."

The theory upon which appellants' contention herein rests, although it has not been so expressed in their brief, must necessarily proceed upon some such formula as the following: The right of free speech is protected by the constitution; the supreme court of the United States has held that peaceful picketing is an exercise of the right of free speech; the picketing here involved was peaceful; therefore, it follows that the picketing in this instance is protected by the constitutional provisions.

The concurring opinion of Mr. Justice Frankfurter in *Kovacs v. Cooper*, *supra*, illustrates the error of applying any such mechanical formula in the interpretation of the United States constitution. We quote his language:

"Some of the arguments made in this case strikingly illustrate how easy it is to fall into the ways of mechanical jurisprudence through the use of oversimplified formulas. It is argued that the Constitution protects freedom of speech; freedom of speech means the right to communicate, whatever the physical means for so doing; sound trucks are one form of communication; *ergo* that form is entitled to the same protection as any other means of communication, whether by tongue or pen. Such sterile argumentation treats society as though it consisted of bloodless categories."

In further emphasis of this point, Mr. Justice Frankfurter quotes the following statement made by Mr. Justice Holmes in his Collected Legal Papers: "To rest upon a formula is a slumber that, prolonged, means death."

The case most strongly relied upon by the appellants to sustain their argument is *Bakery & Pastry Drivers & Helpers Local 802, etc. v. Wohl, supra*, wherein the supreme court of the United States denied the right of the state of New York to prohibit peaceful picketing, in a dispute involving the question of whether or not the appellant union therein had the right to picket for the purpose of forcing an independent bakery goods peddler, employing no one, to [fol. 40] cease working more than six days a week, or else to employ a union relief driver to work the seventh day.

Upon such a skeleton statement of the facts, that case appears to be exactly in point on the issue before us in the present case. However, a closer scrutiny of the facts of the *Wohl* case, *supra*, and of the language of the holding of the court, reveals that the two cases are clearly and readily distinguishable. The facts leading to the dispute in the *Wohl* case can best be set forth by quoting directly from the opinion:

"Five years before the trial, there were in New York City comparatively few peddlers or so-called independent jobbers—fifty at most, consisting largely of men who had a long-established retail trade. About four years before the trial, the social security and unemployment compensation laws, both of which imposed taxes on payrolls, became effective in the State of New York. Thereafter, the number of peddlers of bakery products increased from year to year, until at the time of hearing they numbered more than five hundred. In the eighteen months preceding the hearings, baking companies which operated routes through employed drivers had notified the union that, at the expiration of their contracts, they would no longer employ drivers, but would permit the drivers to purchase trucks for nominal amounts, in some instances fifty dollars, and thereupon to continue to distribute their baked goods as peddlers. Within such period, a hundred and fifty drivers, who were members of the union and had previously worked under union contracts and conditions, were discharged and

required to leave the industry unless they undertook to act as peddlers.

"The peddler system has serious disadvantages to the peddler himself. The court has found that he is not covered by workmen's compensation insurance, unemployment insurance, or by the social security system of the State and Nation. His truck is usually uninsured against public liability and property damage, and hence commonly carried in the name of his wife or other nominee. If injured while working, he usually becomes a public charge, and his family must be supported by charity or public relief."

Continuing, the court pointed out that

"The union became alarmed at the aggressive inroads of this kind of competition upon the employment and living standards of its members. The trial court found that if employers with union contracts are forced to adopt the 'peddler' system, 'the wages, hours, working conditions, six-day week, etc., attained by the union after long years of struggle will be destroyed and lost.' "

The picketing in the *Wohl* case consisted of one or two members of the union walking for short periods of time in the vicinity of two of the bakeries which sold products to Wohl and Platzman, each of the pickets carrying a placard [fol. 41] which bore the name of either Wohl or Platzman, underneath which was the following statement:

"A bakery route driver works seven days a week. We ask employment for a union relief man for one day. Help us spread employment and maintain a union wage hour and condition. Bakery & Pastry Drivers & Helpers Local 802 I. B. of T. Affiliated with A. F. L."

The facts of the case at bar present no such appealing picture in favor of the appellants. Local 882, on whose behalf appellant Local 309 set up the picket line in front of the respondents' place of business, represents the used-car salesmen in the Seattle area. Of 115 such concerns, only ten employ any help at all, the remainder being operated exclusively by their proprietors. From this fact, the conclusion seems irresistible that the union's interest in the welfare of a mere handful of members (of whose working conditions no complaint at all is made) is far outweighed by the interests of individual proprietors and the people of

the community as a whole; to the end that little business-men and property owners shall be free from dictation as to business policy by an outside group having but a relatively small and indirect interest in such policy.

In the case of Carpenters & Joiners Union of America, Local No. 213 v. Ritter's Cafe, 315 U.S. 722, 86 L. Ed. 1143, 62 S. Ct. 807, the United States supreme court stated the rule to be applied in this type of case as follows:

"Whenever state action is challenged as a denial of 'liberty,' the question always is *whether the state has violated the essential attributes of that liberty.*" Mr. Chief Justice Hughes in *Near v. Minnesota*, 283 U.S. 697, 708 [75 L. Ed. 1357, 51 S. Ct. 625, 628]. While the right of free speech is embodied in the liberty safeguarded by the Due Process Clause, that Clause postulates the authority of the states to translate into law local policies 'to promote the health, safety, morals and general welfare of its people. . . . The limits of this sovereign power must always be determined with appropriate regard to the particular subject of its exercise.' *Ibid.*, at 707 [75 L. Ed. 1357, 51 S. Ct. at page 628]. *The boundary at which the conflicting interests balance cannot be determined by any general formula in advance, but points in the line, or helping to establish it, are fixed by decisions that this or that concrete case falls on the nearer or farther side.*" *Hudson Water Co. v. McCarter*, 209 U.S. 349, 355 [52 L. Ed. 828, 28 S. Ct. 529, 531, 14 Ann. Cas. 560]." (Italics ours.)

In our opinion, there is small reason for holding that the appellant union, acting under the guise of protecting the union's freedom of speech, cannot be restrained from depriving the respondents of the liberty of lawfully conducting their business in the only manner that it could be profitably conducted.

We are clearly of the opinion that the decree of the trial court in the instant case is not contrary to the provisions of the constitution of the United States.

The judgment is affirmed.

STEINERT, J.

I concur in the result.

Schwellenbach, J.

We concur:

Jeffers, U. J.

Simpson, J.

Hill, J.

We dissent:

Mallery, J.

Beals, J.

[fol. 43]

DISSENTING OPINION

ROBINSON, J. (dissenting) — In *American Federation of Labor v. Swing*, 312 U. S. 321, 85 L. Ed. 855, 61 S. Ct. 568, Mr. Justice Frankfurter stated the question there involved to be as follows:

“... More thorough study of the record and full argument have reduced the issue to this: is the constitutional guarantee of freedom of discussion infringed by the common law policy of a state forbidding resort to peaceful persuasion through picketing merely because there is no immediate employer-employee dispute?”

The answer there reached is “Yes.” It appears to me that the answer reached in *Guzzam v. Building Service Employees International Union, Local 262*, 29 Wn. (2d) 488, 188, P. (2d) 97, and reiterated in the instant decision, is “No.” Thus, the *Swing* case reads:

“... The scope of the Fourteenth Amendment is not confined by the notion of a particular state regarding the wise limits of an injunction in an industrial dispute, whether those limits be defined by statute or by the judicial organ of the state. A state cannot exclude workingmen from peacefully exercising the right of free communication by drawing the circle of economic competition between employers and workers so small as to contain only an employer and those directly employed by him. The interdependence of economic interest of all engaged in the same industry has become a commonplace. *American Steel Foundries v. Tri-City Council*, 257 U. S. 184, 209. The right of free communication cannot therefore be mutilated by denying it to workers, in a dispute with an employer, even though they are not in his employ. ...”

On the other hand, the majority in the instant case say:

"The substance of our holding in the *Gazzam* case, *supra*, is, as was succinctly stated in the first headnote of the opinion, that peaceful picketing of an employer's place of business is not protected by the constitutional guaranty of free speech and is unlawful, where the employees are not members of the picketing union and the purpose of the picketing is to force the employees to join the union or to compel the employer to enter into a contract which would, in effect, compel his employees to become members of the union . . . , we decline to overrule the *Gazzam*, case, *supra*."

I am unable to reconcile the two views. To further illustrate [fol. 44] the discrepancy which I feel exists here between our holdings and those of the United States Supreme Court, I refer to the case of *Cafeteria Employees Union, Local 302 v. Angelos*, 320 U. S. 293, 88 L. Ed. 58, 64 S. Ct. 126, which cites and relies on the *Swing* case. In that case, the owners of a certain restaurant conducted their business themselves without the aid of any employees. Union members picketed it. The picketing was peaceful, and was held to be permissible as an exercise of free speech, although, as the court found, the purpose of the picketing was to "organize" the restaurant. How does picketing, under these circumstances, differ from that declared to be "unlawful" in the above quotation?

The end sought to be attained by peaceful picketing is not merely the dissemination of information concerning the union's grievance against the employer picketed, since, obviously, that in itself can be of no benefit to the union. Rather, by the dissemination of such information in this manner, the union hopes to persuade others not to deal with the employer. If these others respond, the employer's business suffers, and he may consequently accede to the union's demands. In effect, of course, this amounts to "coercion" of the employer; but if that term is to be employed it should be used with caution, since it is quite clear that this is not the type of "coercion" which the United States supreme court has declared will take picketing from the protection of the fourteenth amendment. On the contrary, this sort of "coercion" was held to be entirely lawful in the *Swing* and *Angelos* cases, *supra*, and in *Bakery & Pastry Drivers &*

[fol. 45] *Helpers Local 802 v. Wohl*, 315 U. S. 769, 86 L. Ed. 1178, 62 S. Ct. 816. What the supreme court means by "unlawful coercion" is clearly illustrated by *Milk Wagon Drivers Union of Chicago, Local 753 v. Meadowmoor Dairies, Inc.*, 312 U. S. 287, 85 L. Ed. 836, 61 S. Ct. 552, decided the same day as the *Swing* case. In that case, in the course of holding that picketing, enmeshed with violence, could be enjoined, the court said:

"No one will doubt that Illinois can protect its storekeepers from being coerced by fear of window-smashings or burnings or bombings. And acts which in isolation are peaceful may be part of a coercive thrust when entangled with acts of violence. The picketing in this case was set in a background of violence. In such a setting it could justifiably be concluded that the momentum of fear generated by past violence would survive even though future picketing might be wholly peaceful...."

The only circumstance I can find in this case which might conceivably constitute "coercion," in the sense in which the supreme court has used that term, is the taking down of automobile license numbers of the patrons of the respondents. Of course, no one would contend that such activities as this are protected by the constitutional guarantee of freedom of speech; but neither can it be said that they are so "enmeshed" with the picketing that harm would be done in enjoining them separately, permitting the constitutionally valid picketing to continue.

Carpenters & Joiners Union of America, Local No. 213 v. Ritter's Cafe, 315 U. S. 722, 86 L. Ed. 1143, 62 S. Ct. 807, rather plainly indicated that the identification of peaceful picketing with freedom of speech may not always be complete, in that situations may arise wherein limitations will be placed on the former which find no analogy in the limitations which may be placed on the latter. Thus, in that case, [fol. 46] union carpenters and painters picketed a certain restaurant, although they had no grievance against its owner other than that he had contracted for the construction of a building, not connected with the restaurant business, and a mile and a half away, with a contractor who employed nonunion labor. This picketing was enjoined by the lower court as a violation of a state anti-trust law. The

supreme court held that the law, as so construed, did not violate the fourteenth amendment. It stated that:

"... As a means of communicating the facts of a labor dispute, peaceful picketing may be a phase of the constitutional right of free utterance. But recognition of peaceful picketing as an exercise of free speech does not imply that the states must be without power to confine the sphere of communication to that directly related to the dispute. Restriction of picketing to the area of the industry within which a labor dispute arises leaves open to the disputants other traditional modes of communication."

It is true that this decision seems inconsistent with the supreme court's broad general theory that picketing is equivalent to free speech. Nevertheless, in merely holding that the restaurant owner could not be picketed because he was outside the area of industrial dispute, it does not seem to me that the court established a precedent of any value in a case such as that at bar. The facts in the *Ritter's Cafe* case bore no resemblance to those in the instant case. The court expressly distinguished the *Swing* case; and, when the *Angelos* case was decided two years later, the court indicated that it was not disposed to recede from its original opinion that a state could not constitutionally forbid peaceful picketing of an employer merely because he employed no members of the picketing union.

My personal views concerning the desirability of identifying picketing with freedom of speech were set forth in concurring opinions in *O'Neil v. The Buildings Service* [fol. 47] *Employers International Union, Local No. 6, 9 Wn. (2d) 507, 115 P. (2d) 662*, and in *S & W Fine Foods v. Retail Delivery Drivers and Salesmen's Union, Local No. 353, 11 Wn. (2d) 262, 118 P. (2d) 962*. They have not changed. But neither has my belief that, in the interpretation of the Federal constitution, the supreme court of the United States must have the final word.

I, therefore, dissent.

Robinson, J.

GRADY, J. (Concurring).

As a general rule, neither a concurring opinion nor a dissent serves much useful purpose or is of much assistance in the solution of the particular judicial problem before the court, but as I have not had an opportunity to express any views on the complex questions which have heretofore come before this court arising out of the clash between conflicting constitutional rights and privileges possessed by organized labor and those engaged in commercial enterprises, or as between labor organizations themselves, I find myself in a dilemma as I read the majority and dissenting opinions of my associates in this case as well as the cases, both state and Federal, which have been cited.

When the United States Supreme Court handed down its opinion in *American Federation of Labor v. Swing*, 312 U. S. 321, there arose the belief in the minds of many persons that as the physical act of picketing was a manifestation of speech, the freedom of which was guaranteed by the United States Constitution, that this meant it could be exercised regardless of its economic effect on others and thereby labor organizations might by this method lawfully exert sufficient economic pressure to force acquiescence in the attainment of their objectives. This idea overlooked the fact that those upon whom the economic pressure was exerted likewise had equally guaranteed constitutional rights and privileges. In the inevitable clash that followed when each claimant insisted upon the full measure of such constitutional rights both the legislative and judicial branches of government have had to take a firm stand and [fol. 49] by legislation in some states and by judicial decree in others make an attempt to prescribe limitations upon and regulate the exercise of the right of free speech in the form of picketing. This has been an ever-increasing and difficult task. The net result to date is the promulgation of certain principles and pronouncements to be applied to each situation as it arises, all with the view of conveying to the contending forces some of the limitations upon the exercise of their respective rights.

With this objective in view a majority of the members of this court in the present case and in some of those cited have endeavored to balance conflicting interests both as

between the directly interested parties and the public welfare, and in doing so have stated in effect that whenever picketing is carried beyond the field of persuasion into the field of intimidation, coercion or business compulsion it ceases to be protected as free speech. This conclusion has been reached after much study and reflection as indicated by our many decided cases, and while there may be room for a difference of opinion as to whether the degree of coercion exists in this case as to warrant the conclusion reached by the majority, I am constrained to concur in the majority opinion because it follows and applies rules to which the court has definitely committed itself by such cases as *Swenson v. Seattle Central Labor Council*, 27 Wn. (2d) 193, 177 Pac. (2d) 873, and *Gazzam v. Building Service Employees International Union, Local 262*, reported in 29 Wn. (2d) 488, 188 Pac. (2d) 97. The trend of legislation in many states and of recent decisions of the courts of such states and those of the United States Supreme Court sustaining the enactments is in the same direction.

Grady, J.

[fol. 50].

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

A. E. HANKE, L. J. HANKE, R. R. HANKE and R. M. HANKE,
copartners doing business under the name and style of
ATLAS AUTO REBUILD, Respondents.

vs.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS UNION, LOCAL 309, and DICK
KLINGE, its Business Agent, and MEL ANDREWS, its Sec-
retary, Appellants.

JUDGMENT—July 5, 1949

This cause having been heretofore submitted to the court, upon the transcript of the record of the Superior Court of King County, and upon the argument of counsel, and the Court having fully considered the same and being fully advised in the premises, it is now, on this 5th day of July, A. D. 1949, on motion of J. Will Jones, H. C. Vinton, and Clarence L. Gere, of counsel for respondents, considered,

adjudged and decreed, that the judgment of the said Superior Court be, and the same is hereby affirmed with costs; and that the said A. E. Hanke, L. J. Hanke, R. R. Hanke, and R. M. Hanke, copartners doing business under the name and style of Atlas Auto Rebuild, have and recover of and from the said International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers Union, Local 309, and Dick Klinge, its Business Agent, and Mel Andrews, its Secretary, and from Continental Casualty Company, surety, the sum of Two hundred fifty and no/100 Dollars (\$250.00), and costs in the Superior Court, with interest on said amounts at the rate of six per cent (6%) per annum from May 19, 1948, until paid, and the costs of this action taxed and allowed at Eighty-one and 35/100 (\$81.35) Dollars, and that execution issue therefor. And it is further [fol. 51] ordered that this cause be remitted to the said Superior Court for further proceedings, in accordance herewith.

Of record in Journal 39 at page 117 of the records in the office of the Clerk of the Supreme Court of the State of Washington.

[fol. 52]

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

[Title omitted]

MOTION FOR ORDER STAYING EXECUTION AND ENFORCEMENT OF JUDGMENT AND FIXING AMOUNT OF SUPERSEDEAS AND COST BOND ON PETITION FOR CERTIORARI—Filed July 5, 1949.

[File endorsement omitted.]

[fol. 53]

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

[Title omitted]

ORDER STAYING EXECUTION AND ENFORCEMENT OF JUDGMENT AND FIXING AMOUNT OF SUPERSEDEAS AND COST BOND ON PETITION FOR CERTIORARI—July 5, 1949

[File endorsement omitted.]

[fol. 54-55]

SUPERSEDEAS AND COST BOND ON PETITION FOR CERTIORARI—
For \$250.00 omitted in printing.

[fol. 56-57]

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

[Title omitted]

STIPULATION CONCERNING STATEMENT OF FACTS AND EX-
HIBITS—Filed July 5, 1949

[File endorsement omitted.]

[fol. 58-59]

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

[Title omitted]

PRAECIPE FOR RECORD—Filed July 5, 1949

[fol. 60]

Clerk's Certificate to foregoing transcript omitted in
printing.

[fol. 2]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON,
FOR KING COUNTY

No. 392989

A. E. HANKE, L. J. HANKE, R. R. HANKE and R. M. HANKE,
copartners doing business under the name and style of
ATLAS AUTO REBUILD, Plaintiffs.

vs.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN and HELPERS (UNION, LOCAL 309, and
DICK KLINGE; its Business Agent, and MEL ANDREWS, its
Secretary, Defendants.

STATEMENT OF FACTS.

Be It Remembered that heretofore, and on to-wit
March 2, 1948, the above entitled cause came regularly on
to be heard in the above entitled Court, before the Honorable
Donald A. McDonald, one of the Judges of said Court,
sitting in Department No. 12 thereof, the case being heard
by the Court without a jury;

APPEARANCES

The plaintiffs appearing by Mr. J. Will Jones and Mr.
Clarence E. Gere, their attorneys and counsel;

The defendants appearing by Mr. Samuel B. Bassett,
of Messrs. Bassett & Geisness, their attorney and counsel;
Counsel for the plaintiffs having made an opening state-
ment and counsel for the defendants having reserved his
opening statement;

Thereupon the following proceedings were had and done,
to-wit:

[fol. 3] L. J. HANKE, called as a witness on behalf of the
Plaintiffs, being first duly sworn, testified as follows:

Direct examination.

By Mr. Jones:

Q. Your name is L. J. Hanke?

A. That is right.

Q. You are one of the four plaintiffs mentioned in the complaint?

A. That is right.

Q. And you verified this complaint?

A. I did.

Q. And you acted in doing that for yourself and the other three plaintiffs?

A. That is right.

Q. And they are all members of your family?

A. That is right.

Q. How long have you been operating this business, all of you there?

A. Two years this coming June.

Q. What is the nature of the business?

A. Auto repairs, auto rebuild, gas station and sell used cars.

Q. Do you brothers there hire any employees there?

A. No.

Q. Who does the work?

A. My brothers, my Dad and myself.

Q. Since the first of the year have you had any employees up there other than these that you have mentioned here?

A. No.

Q. Is your place—since February is your business being picketed?

[fol. 4] A. It is.

Q. By whom?

A. By the Teamsters, one of the pickets of the Teamsters Local, I think it is No. 289. There is a sign and he is out there back and forth for two or three days.

Q. How close to your entrance is this picket?

Mr. Bassett I object to that as irrelevant and immaterial.

The Court: It is admitted there is a picket at the place.

Mr. Bassett: Yes, an advertisement of the Union. I don't call it a picket. I call it an advertiser.

The Court: That is the one he speaks of as a picket?

Mr. Bassett: I picket is what he says, I think.

Q. What is the nature of that picketing? What is this painted on? Is it on a board?

A. Yes, it has it painted on.

Q. Is it a sandwich board, or what?

A. Yes, on which one sign is on both sides of it.

Q. What is said on it?

A. It says on one—

Q. The one carried by this Union picket of the Teamsters, what did that one say?

A. It has the ordinary placard of the Teamsters card on it on both sides, the front and back, and above and below it has "Union people look for the Union shop," words to that effect.

Q. That is all there is on it?

A. That is right, that is all that it has.

[fol. 5] Q. That people who come there should not go in the place?

A. If they were to come in there.

Q. (Mr. Bassett) Who?

A. That they should not patronize the place, the shop, for anyone.

Q. (The Court) What does it say?

A. It tells the people not to come in there. It says a non-union place. I can have two witnesses to that effect.

Q. When was this picketing started?

A. It was the 12th of February.

Q. Of this year?

A. This year, yes.

Q. How much wages had you paid—You don't pay any wages I understood you to say?

A. That is right.

Q. What is done with the money that you brothers made there?

A. We used it to live on. We keep what we make.

Q. Is it divided or what?

A. We put it in a fund and draw whatever we can on it.

Q. Just all of you?

A. That is right.

Q. Is there any dispute at your place regarding wages or hours or conditions of employment?

A. None whatever.

Q. What has been the effect there since that picket has been there? Have you had any trouble about the delivery of materials and supplies to your place?

A. Yes sir.

Q. What trouble did you have?

A. No Union members will make deliveries through a [fol. 6] picket line.

Q. (The Court) What is that?

A. No union member will make deliveries through a picket line.

Q. (The Court) Because of what is on that sign?

A. No. That is a union rule. The laundry driver came down and he called in and asked if they could make delivery, and they told us no, that they actually couldn't pick it up.

Q. (The Court) Did you call them?

A. No, we didn't. The driver came in there and used the phone to call.

Q. And then the driver said they could not make delivery?

A. I imagine they called up in the meantime.

Mr. Bassett: I move to strike that.

The Court: Yes. Did you hear what he said?

A. Yes; but I don't know who he called. Somebody called them anyway. Who they talked to I don't know.

Q. (Mr. Bassett) This driver called his employer?

A. Yes sir.

Q. Were there deliveries made there while this party was picketing?

A. No.

Q. What did you do in order to get supplies at your place?

A. We used our car after that.

Q. You drove your car to the places where you were buying supplies because they would not deliver and took them out of there?

A. That is right.

Q. Do you know of any particular one where you were buying supplies and they could not be delivered to your place?

[fol. 7] A. None of these parts houses around that you call up to buy parts from.

Q. Do you know of any specific instances?

A. Piston Service is one we tried, Piston Service, Inc., Marshall Machine Shop—

Mr. Bassett: I object to that as hearsay. That is something somebody else told to you.

The Court: You can answer only what you know.

A. I was there at the time the picket and the driver was there.

Mr. Bassett: You cannot tell what the driver said.

A. They refused to deliver it.

Q. (The Court) That is people you had called on to deliver things to you?

A. I was told that the driver won't go through—

The Court: Just answer the question asked you.

Q. Do you remember calling up McKay, Inc., at that time?

A. No, not then, but we did Smith Gandy to get a motor delivered.

Q. And was it delivered by Smith Gandy?

A. No, it was not.

Q. Do you know why it was not delivered?

A. Yes.

Q. Why wasn't it?

A. The driver said he couldn't go through a picket line.

Mr. Bassett: I move to strike that, what the driver said. It is hearsay. I don't know who the driver was.

A. He was employed by Smith Gandy.

Mr. Bassett: I want to know who he was.

Q. It was a driver of the Smith Gandy Company?

[fol. 8] A. Yes sir, a delivery man.

The Court: I think he has to show the definite person.

Q. Did you go to Smith Gandy and get that?

A. I did.

Q. How did you go?

A. I went down with a truck and got it.

Q. Do you know of any other instances that you could not get delivery?

A. I couldn't get the laundry. We had to have all the shop towels and things of that nature.

Q. How did you get them?

A. I called for them and got them and brought them down.

Q. Is your business damaged by this picketing?

A. Yes, it is.

Q. What effect does it have upon people who want to go and do business with you?

A. If they don't belong to the union—

Mr. Bassett: I object to that as calling for a conclusion.

Q. (The Court) Were there any less came in there after the picketing, when the picket was there at your place?

A. I can just state what somebody said when the picket was there.

Mr. Bassett: I move to strike that.

Q. (The Court) Did you have any less people patronize you after than before?

A. Yes.

The Court: Next question.

Q. Have you any idea of the time the picket is on duty there?

[fol. 9] A. Approximately from 8:30 in the morning until 5:00.

Q. Where does he stand or walk or whatever he does at the place?

A. He ~~walks~~ on the whole side of the building.

Q. Are you on a corner there?

A. Yes.

Q. And he would walk around these premises on one side back and forth and along the other side?

A. Yes, on the sidewalk.

Q. Did you see him at any time speak to any party who was about to go in there?

A. Yes.

Q. Did you hear what he said to those people?

A. No, I couldn't hear what he said, but the people told what he said.

The Court: You cannot tell that.

Mr. Jones: That is all on our prima facie case.

Cross examination.

By Mr. Bassett:

Q. You have been in business two years this June?

A. That is right.

Q. Have all four of you, including your father, been partners since June?

A. No, three of us, my father and one other brother and myself in fact.

Q. Three of you commenced the business in June, 1946?

A. Yes sir.

Q. When did the fourth brother come in?

A. Last of August or September last year.

[fol. 10] Q. You had other people hired, didn't you, in the business?

A. Yes. We hired help to begin with.

Q. When?

A. We had help to begin with.

Q. And how long did you have such help—When did you stop having help? Put it that way.

A. It was late in the fall of 1946.

Q. What kind of help did you have then?

A. Two body men and a sheet metal worker.

Q. In the rebuild department?

A. Yes sir.

Q. When did you commence selling used cars?

A. After the O. P. A. went off.

Q. How long ago would that be, a year ago?

A. Yes, better than a year ago.

Q. What hours did you keep the place open?

A. From eight to six.

Mr. Jones: I object to that as incompetent, irrelevant and immaterial.

Mr. Bassett: He was asked here when the picket was out at the place.

The Court: He may answer that.

Q. What hours do you keep your place open?

A. From eight in the morning to six at night. We are not any one of us there all the time.

Q. Have you ever been open after six?

A. Occasionally, yes.

Q. How often are you open after six?

A. If there is work to do we are supposed to take care of it, to stay until it is done.

[fol. 11] Q. Do you sell used cars after six o'clock?

A. Yes sir.

Q. Do you sell used cars on Saturdays?

A. We do.

Q. On Sundays?

A. We do.

Q. You keep your place of business open on Sundays?

A. Yes; we do.

Q. Did your father join the Union in June, 1946, at the time that you started business?

A. I believe at the time he transferred to them.

Q. He transferred to it?

A. Yes sir.

Q. He was a member of another Union?

A. Yes sir.

Q. What Union was he a member of before?

A. It was a shipyards Union.

Q. And he became a member of this Union, Local 309?

A. In June, 1946.

Q. About the time that you opened the business?

A. About that time.

Q. And at the time he was a member of this Union they permitted him to use this shop card (showing witness card)?

A. They did.

Mr. Bassett: I will ask that this be marked for identification.

The Clerk: Defendants' Exhibit 1.

Q. Showing you what has been identified as Defendants' Exhibit 1 I will ask you to state whether that is like the shop card that was displayed in your window at your place [fol. 12] of business?

A. It appears similar to it.

Q. The size and the words?

A. I think so.

Q. It is identical, isn't it?

A. I could not swear to that.

Q. You don't remember that?

A. No.

Q. That was put in there in June, 1946, wasn't it?

A. That was there before we came and they never removed it. It was present in the location of the business.

Q. Somebody else had it there?

A. That is right.

Q. And it continued there when your father became a member of this Union?

A. Yes sir.

Q. Somebody came to see him, didn't they?

A. Yes.

Q. And this sign remained there until the 12th of February, 1948?

A. It was removed before that.

Q. When?

A. The previous week they were out there and removed it.

Q. That was before this picketing commenced? Isn't that right?

A. That is right.

Q. January 27th, wasn't it on that date?

A. It was picketed about I think—

Q. Just before the picket started?

A. Shortly before the picket started, yes.

[fol. 13] Mr. Bassett: I offer Defendants' Exhibit 1 in evidence.

Mr. Jones: I object to that on the ground that the testimony shows that this card was taken out on the day before the picket started, and what happened in the time before that is irrelevant and immaterial, and ask that all testimony relating to that be stricken upon the same ground, something that happened before this controversy started, before the picketing started.

The Court: On the testimony it is admitted.

(Shop card referred to is admitted in evidence as Defendants' Exhibit 1.)

Q. That remained in the window up there from the time it was put up in June, 1946, until about January 27, 1948?

A. That is right. There was also a No. 289 card up there.

Q. What is No. 289?

A. Auto machinists.

Q. And you didn't take that card out?

A. No.

Q. Is it still there?

A. It is still there?

Q. You have not taken it down?

A. No. They put it up there and they can take it down.

Q. Are you familiar with the publication, The Washington Teamster?

A. I don't know.

Q. Have you ever seen the like of this paper, the paper of the Teamsters local that looks like this (showing witness paper)?

A. I have not seen this one.

[fol. 14] Q. The Union newspaper?

A. I have seen some—

Q. They put it out, the Teamsters Union. You have seen this?

A. I suppose I have in places.

Q. But you have never seen this one?

A. No.

Q. You mean to say you did not see this in your place of business when your father was a member of the Union?

Mr. Jones: I object to that on the same ground.

The Court: I think I will hear it all. I will hear you in the argument.

A. I have never seen it in there. I don't recall it before the Union picketed.

Q. Do you mean to tell us that you never saw that before at your place of business on Rainier Avenue, because your father was a member of the Union?

A. No sir.

Q. That you have never seen it?

A. I have never seen this paper.

Q. You have never seen it?

A. No.

Q. And you don't know anything about it?

A. No sir.

Q. Did you say you have seen the picket out there?

A. Yes.

Q. Could you identify the man who you are calling a picket?

A. One of them was a teamster

Q. A teamster?

A. Yes.

Q. You have already testified to the kind of sign he had on?

[fol. 15] A. Yes.

Mr. Bassett: Mark these, please.

The Clerk: Defendants' Exhibits 2 and 3.

Q. A similar card to these, "Union members look for the Union shop card"?

A. Something to that effect.

Q. Handing you Defendants' 2 and 3 for identification, I will ask you to state if that is the gentleman who is in that picture?

A. That is one of them.

Q. And is that the sign that he wore?

A. Yes sir.

Q. Speaking of the front view?

A. Yes sir.

Q. And of your own knowledge, is that the man?

A. Yes sir.

Q. That is the card he wore, isn't it?

A. Yes.

Q. And showing you Defendants' Exhibit 3 for identification, isn't that a back view of the same sign and the same man?

A. I believe it is.

Mr. Bassett: I offer Defendants' 2 and 3 in evidence.

Mr. Jones: No objection.

The Court: They are admitted.

(Pictures referred to are admitted in evidence as Defendants' Exhibits 2 and 3.)

Q. Were you present when Mr. Klinge, the representative of Local 309, came out on January 27th?

A. Yes, I was.

[fol. 16] Q. To whom did he speak?

A. He spoke to one of my brothers and my Dad and myself.

Q. Was someone with him?

A. There was a representative of the car salesmens Union.

Q. (The Court) Of which Union?

A. The car salesmen.

Q. Mr. Marshall?

A. I didn't know his name.

Q. Did he have any talk there?

A. He did have, the gentleman, I didn't know the party from the Car Salesmens Union.

Q. (The Court) The Car Salesmens Union?

A. Yes sir.

Q. Asked you to join it?

A. Yes.

Q. Did Mr. Klinge tell you what the difficulty was with your father's membership?

A. They wanted us to join the Car Salesmen's Union and sell cars five days a week, between eight and five.

Q. As a matter of fact all they wanted you to do was to conform with the Union's working conditions, Union rules so you would not be in competition with these people who were selling used cars and who had contracts with the Union? Isn't that right? Isn't that what they said to you?

A. They said they wanted us to sign up.

Q. They wanted all three of you to join the Salesmen's Union?

A. They wanted any of us who had anything to do with selling the cars, the four different members to have four different cards.

Q. (The Court): That is each one of you that was sell-
[fol. 17] ing cars you say?

A. Yes sir.

Q. (The Court): Each one that was selling cars there?

A. That is the idea. They didn't want us to sell cars unless we belonged to the Union, and everyone who had anything to do with used cars had to belong to the Union.

Q. (The Court) If any one of you didn't belong to the Union, then he could not sell cars?

A. That is right.

Q. Who told you that?

A. These two fellows down there, the business agents.

Q. I will ask you if what they told you was this, that the Union had certain regulations with regard to the handling of used cars on Saturdays and in the evenings after six o'clock and on Sundays? Wasn't that shown to you to be the condition that prevailed in the industry, and they wanted you to conform with those regulations?

A. That was after six o'clock, provided you stayed open for eight hours.

Q. (The Court) What they told you, that you could not sell on Saturdays and couldn't sell on Sundays?

A. Yes, not to sell on Saturdays, Sundays, holidays or in the evenings.

Q. (The Court) That is any day after six o'clock if it was more than eight hours? Say if you started at four o'clock in the afternoon it would be all right, but you could not sell over eight hours in any one day?

A. I believe that is the way they put it.

Q. They wanted you to conform to that regulation in the

selling of your cars? Isn't that what Mr. Klinge said they [fol. 18] wanted you to do?

A. They wanted us to join and follow Union regulations, yes.

Q. (The Court) And also they wanted you to join the Union?

A. Yes sir, they wanted us to join the Union.

Q. All of you.

A. All of us that had anything to do with car sales to join the Car Union.

Q. You were to take out cards then?

A. Yes sir.

Q. (The Court) Which Union is that? What is the name of the Union?

A. I don't know the name of the local. It was the Car Salesmen's Union.

Q. (The Court) Not the Teamsters?

A. No.

Mr. Bassett: They are affiliated with the Teamsters. It is Local 882, isn't it?

A. I never inquired about that.

The Court: It is a distinct Union?

Mr. Bassett: There are two Unions. No. 309 is the Union comprising these people, the employees who are engaged in the service station business, in the disposition of gas and oil and the like. Then the Teamsters have a Local 882 that is comprised of the salesmen of automobiles, people who sell automobiles. That is the Salesmen's Union.

The Court: You say they are affiliated?

Mr. Bassett: They are affiliated. They are all the same Union.

Mr. Jones: Are they all encompassed in this, that is [fol. 19] Local 309?

Mr. Bassett: They are all parts of the same Union. They are all members of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers. They are all subdivisions of the Teamsters Union.

The Court: Ask another question.

Mr. Jones: This Union No. 309 is the one in issue here.

The Court: He says it is part of the Teamsters Union.

Mr. Bassett: It is alleged in the affidavit that it is the same Union.

The Court: It is like the Presiding Judge and the different Departments?

Mr. Bassett: That is right.

Q. Did Mr. Klinge of this Union of which your father is a member, tell your father and tell you that if you wouldn't conform with their Union regulations that you would have to take out your shop card?

A. He didn't say that.

Q. You will deny that?

A. He told us he would take it out if we wouldn't join the Car Salesmens Union.

Q. Did you agree to abide by the Union's regulations?

A. That was never entered into.

Q. Did you agree orally to conduct your business according to the Union's standards?

A. No.

Q. You refused to do that, didn't you?

A. Yes.

[fol. 20] Q. And they told you that you were not fair competitors with other dealers who were engaged in selling used cars who had contracts with the Union?

A. That had contracts with who?

Q. Contracts with the Union, employer's contracts—

The Court: Did Mr. Klinge and this other man tell you that you were not in fair competition with these people who were observing the Union rules?

Mr. Bassett: That is right.

Q. (The Court) Did he tell you that?

A. Yes.

Q. You said that you would run your business the way that you saw fit? Isn't that what you told him; in substance?

A. Yes sir.

Q. And that is when he said he would have to take out your card out of your place?

A. Yes.

Q. And they also told you that they would have to cease the advertisement that you were a Union Shop?

A. No.

Q. They didn't say anything like that?

A. No.

Q. Didn't he tell you that they would advertise that you were not operating a Union shop any longer?

A. They didn't say that, but I took that for granted at the time.

Q. Do you have any customers who are members of any Union?

A. I have lots of them.

Q. And those customers have quit patronizing you since they called and took out that sign?

[fol. 21] A. Yes, some of them.

Q. Have you ever been a member of the Union?

A. I have.

Q. Do you know it is against Union regulations to patronize a non-union shop? Don't you? Isn't that true?

A. That is right, but this is not Russia.

Q. When you join a Union you agree not to do that? That is in consideration of membership, isn't it?

The Court: Everybody knows that. You don't have to prove that.

Q. You say that certain business men refuse to deliver to you.

A. That is right.

Q. Do you know whether these plants had Union drivers?

A. Their drivers were Union.

Q. They were Union drivers, weren't they?

A. Yes sir.

Q. Did anybody interfere with you when you went out to haul in this material? Did anybody interfere with you or any customers? Did anybody interfere with you?

A. No. The reason was I had to pay cash for that and—

Q. No one prevented you?

Mr. Jones: In what way do you refer?

The Court: What did you say?

Mr. Jones: When he accepted them and paid cash and took delivery.

Q. Did this picket bother you?

A. No.

Q. (The Court) You mean physically?

A. Not physically, no.

[fol. 22] Q. Anybody bother you in any way? Threaten you?

A. That is something I couldn't check up.

Q. You would know that if there was anything, wouldn't you?

The Court: You mean make any threats of physical violence?

Q. Did anybody threaten you with physical harm?

Mr. Jones: I thought you meant on the drivers.

Q. No, I mean his own deliveries. This picket didn't disturb you, did he?

A. No. He just walked up and down the street.

Q. He did not speak to anybody when anybody came in and out?

A. He spoke to some persons who tried to come in the place.

Q. Did you hear what he said?

A. He told them it was a non-union place and it was picketed.

Q. That is what the sign said, didn't it?

A. Yes, but he talked to a number of customers who had come in during that time.

Q. What you would like to have is to have all these deliveries made by Union drivers to your place of business? That is what you actually want, don't you?

Mr. Jones: I object to that. That isn't the purpose.

The Court: Let us see. The complaint asks that the picket be enjoined from interfering with, molesting or damaging, damaging the business.

Q. You want the pickets stopped from interfering with the conduct of deliveries to your business?

A. That is right.

Q. That is one thing that you want?

A. Yes sir.

Q. And you want to stop them from letting it be known [fol. 23] that you are not a Union business, isn't that right?

A. I don't care if it is Union business or nonunion business.

Q. But you want that? There is no penalty for anyone who is not a member of a Union for passing a picket line to do business in a place?

A. That is right.

Q. There is no penalty?

A. As far as I know.

Q. So that these people who want to be able to deal with you whether a picket is there or not?

A. That isn't correct.

Q. That isn't true?

A. No.

Q. (Mr. Jones) What is the answer?

A. That isn't correct.

Q. Did you see the picket attempt to physically stop anybody from going in?

A. No sir. One man could not do that.

Q. He didn't try, did he?

A. No.

Q. That man was the only picket who came near the place?

A. The picket was in plain view of the persons entering.

Q. That didn't bother you, did it?

A. Yes.

Q. You have a truck, don't you, that you use for hauling material?

A. I did have.

Q. And in that you did your own hauling?

A. I did.

Q. And you told the Court in your business you don't [fol. 24] need any employees?

A. That is right.

Q. You are perfectly able to do the entire job yourselves, aren't you.

A. I claim with the partners in the business, yes.

Mr. Bassett: No further examination.

Redirect examination

By Mr. Jones:

Q. At the time you said Mr. Klinge was out there and took the Union Card down, were you a member of the Union at that time?

A. No.

Q. Was any one of your brothers a member of the Union at that time?

A. My father was, but his dues were past due at the time and I guess he got out for not paying dues or something.

Q. (Mr. Bassett) You said he was a member or was out of it?

A. As far as I know he was not in good standing in 289 because his dues had not been paid up since June.

Q. What is 289?

A. The Auto Mechanics Union.

Q. (Mr. Bassett) Are you able to decide whether your father belonged to that one particular Union or didn't?

A. Once father did belong to the Union out there.

Q. Is he now a member of the Union?

A. During the war time he was a member.

Q. And then he reapplied with the Union in Seattle, this Union?

A. Yes.

[fol. 25] Mr. Jones: That is all.

The Court: Is it a fact that, once a member of a Union, that according to their rules he still is, whether he pays dues or not? Do they make him continue to be a member, whether he pays dues or not?

Mr. Bassett: There is a proviso that he can resign.

The Court: Did he ever resign?

Mr. Bassett: No.

A. No, no one can ever resign from the Union. If he pays back dues he can come in. In my particular Union if you were three months past due you are automatically out.

Q. Was it Jan. 27th that Mr. Klinge picked up the Union Card?

A. I couldn't tell you the date.

Q. And this picketing didn't commence until February 12th you say?

A. That is right.

Mr. Jones: That is all.

Mr. Bassett: No further questions.

(Witness excused.)

Mr. Jones: That is all our evidence.

Plaintiffs rest.

The Court: Any further evidence?

Mr. Bassett: Yes, your Honor.

[fol. 26]

Defendants' Evidence

DICK KLINGE, called as a witness on behalf of the Defendants, being first duly sworn, testified as follows:

Direct examination.

By Mr. Bassett:

Q. State your name, please.

A. Dick Klinge.

Q. You are connected with Local 309 of the Teamsters Union?

A. Yes. I am business agent of the local.

Q. How long have you been business agent?

A. Since January of 1947.

Q. Is A. E. Hanke a member of your particular Union?

A. Yes.

Q. When did he join the Union?

A. He joined the Union in—he was initiated into the Union July 23, 1946.

Q. When did he make application?

A. Upon that date.

The Court: When was that?

Q. July, 1946?

A. Yes.

Q. (The Court) When he became a member?

A. When he was initiated.

Q. (The Court) When he did what?

A. When he became a member.

Q. In your affidavit you recite the dates that he was a member, being from June 22, 1946, to January 27, 1948. How do you explain the July date?

[fol. 27] A. In January, 1947, they split the Local 44 into two locals and made 309 out of it, and he was brought into Local 309.

Q. It is a new Union?

A. Yes sir.

Q. Made subsequently?

A. Yes.

Q. And he was a member of the Teamsters Union beginning when?

A. July 23, 1946.

Q. Did you go out to see Mr. Hanke on or about January 27, 1948?

A. I did.

Q. (The Court) Which Mr. Hanke, any particular one or all of them?

A. We went out to see all of them.

Q. And how many of them were there?

A. Four of them.

Q. The four of them were there?

A. Yes.

Q. What prompted you to go out to the place? What was the reason for your going there?

A. A dispute existed there between Local 882, a Teamsters Local, and the Atlas Auto Rebuild.

Q. (The Court) No. 882, what is that?

A. The Car Salesmen.

Q. And at that date I will ask you what you had learned, if anything, concerning the business being done out at the Atlas Garage?

A. Their business was mechanical business, selling used cars as the plaintiff stated, service station, and body and [fol. 28] fender work on automobiles.

Q. There had been a complaint made by Local 882 that they were selling cars on Sundays and Saturdays and holidays and after hours?

A. That is right.

Q. And that complaint was made to you by whom?

A. By the secretary of Local 882.

Q. And in pursuance of that complaint you went out to investigate, did you?

A. Yes sir.

Q. Did you find out that was true, that they were so conducting business on that visit?

A. That is right.

Q. Could you tell the Court what the membership of local 882 is composed of?

A. Of automobile salesmen.

Q. Of new and used cars both?

A. That is right.

Q. Do you know whether that Union has contracts with concerns that are engaged in the auto business, old and new?

A. They have contracts with the majority of the used car dealers in the City and all of the new car dealers in the City.

Q. Do you know what regulation, if any, the contracts provide for concerning the hours of work?

A. The hours of work are between eight and six—eight in the morning and six at night, and close Saturdays and Sundays.

Q. What about holidays?

A. Closed holidays.

[fol. 29] Q. What was your purpose in going out to see the Hanks on that day?

A. My purpose was to go out to see them, as I did in other cases, was to tell them what the members of Local 882 had represented, because they were doing business in competition with 882 members, who were forbidden by their agreement from selling cars at those times.

Q. What was the complaint made at that time, that the Hanks were engaged in selling used cars?

A. Yes sir.

Q. Did you know that they were opened up on Saturdays and Sundays?

A. No, I didn't know that.

Q. And after six o'clock in the evenings?

A. No, I didn't know that either.

Q. Is that what you went out to investigate?

A. Yes sir.

Q. Did they tell you that that was true?

A. Yes, they did.

Q. What did you say about discontinuing the practice, if anything?

A. I asked them to discontinue it, and asked them if they had planned on continuing to sell cars in the future and if they were—

Q. (The Court) If they were in the future?

A. If they were going to keep on selling cars in the future?

Q. (The Court) You mean at all?

A. At all. And that is when I asked them to conform with our dealers' local agreement, close during the hours that the rest of the dealers shops and salesmen closed up.

[fol. 30] Q. Did you or the other gentleman who was with you ask them to sign a contract to make used car sales?

A. I never did.

Q. Who was with you?

A. Mr. Marshall.

Q. Did Mr. Marshall ask them to sign any contract?

A. No sir.

Q. Did you tell them what would happen unless they did comply with the terms of hours of employment of the Union salesmen?

A. Yes. I informed them if they didn't follow the 882 agreement I would have to take the Union shop card out because they would be referred to as a nonunion shop.

Q. And what did they say, and who said it?

A. I said this first, I said that we would go out and contact some other people and come back in an hour or so. And accordingly we all went out of there.

Q. Did you give them time to think it over?

A. Yes. I gave them time to think it over. And one of the brothers said, "You can get the card right now, you don't have to come back in an hour, if that is the way you feel about it."

Q. (The Court) One of them said what?

A. He said, "Take it right now if that is the way you feel if you see fit."

Q. Did you then go away and take the card away?

A. Not until we came on back.

Q. Do you remember anything else that was said by any of them as to that?

A. No. There was nothing else said.

[fol. 31] Q. Is this Local No. 309 one of the joint council of Teamsters?

A. Yes, it is.

Q. Does the joint council of Teamsters have a weekly newspaper?

A. Yes.

Q. Known as the Washington Teamster?

A. Yes.

Q. Was that issued every week during the period between June, 1946, and February 12, 1948?

A. Yes, it has been. Every Friday they get out.

Mr. Jones: I think that is incompetent, irrelevant and immaterial and ask that the answer be stricken.

Mr. Bassett: It is just preliminary.

The Court: Objection overruled. He may answer.

Q. When members of 309, members of the Teamsters Union, are engaged in operating gasoline and service stations, is their business advertised in this newspaper?

A. Yes, it is.

Q. And was it during all that time?

A. Yes, it was.

Mr. Bassett: Mark this, please.

The Clerk: Defendants' Exhibit 4.

Q. Handing you Defendants' Exhibit 4 I will ask you to state whether that is an issue of the Washington Teamster dated July 5, 1946?

A. Yes sir.

Q. Is the plaintiffs' place of business advertised here in this Union paper?

A. Yes, it is.

[fol. 32] Mr. Jones: Before you go further, I object to that because he has not continued his membership and the newspaper would have ceased in January when—

The Court: He said he is still a member.

Mr. Bassett: He is still a member.

Mr. Jones: I understand he was not a member after that.

The Witness: No.

The Court: He thinks he is a member.

Mr. Bassett: I asked the witness and he said he is a member.

Mr. Jones: He said in effect that he ceased to be a member.

The Court: And he said he couldn't identify it.

A. Yes, he is still a member. Before he ceased being a member he would have to have—

Q. (The Court) Do you have as members people who are in business for themselves?

A. Yes sir.

Q. (The Court) It is not confined merely to those who are working in the shop to be members?

A. No.

Q. To have the benefit of a Union Card they would have to be all members?

A. Yes.

Q. (The Court) Then on your records he is still a member there?

A. Yes sir.

Mr. Bassett: I offer in evidence Defendants' Exhibit 4. [fol. 33] The Court: It is admitted.

Mr. Jones: I object to it. It is immaterial.

(Argument.)

The Court: It will be admitted.

(Copy of Washington Teamster is admitted in evidence as Defendants' Exhibit 4.)

Q. I will ask you to state whether in Exhibit 4 this Atlas Auto Rebuild is advertised on page six?

A. Yes, it is.

Q. It has a red circle around the name there?

A. Yes.

Mr. Bassett: I will hand it to the Court.

(Mr. Bassett hands exhibit to the Court)

Q. Does this appear there every week?

A. No. It appears twice a month.

Q. There is an issue every week?

A. It is issued every week but—

Q. But an ad appears only twice a month?

A. That is right.

Q. Every other week?

A. Yes. We have many other people, too many to put in the paper at one time. It is necessary to change them every two weeks.

The Court: When was the last time?

Mr. Bassett: I was going to get to that, February 6, 1948. I will put that in.

The Court: You will put that in?

Mr. Bassett: Yes. I will get to that. Will you please mark this issue of the Washington Teamster dated June 6, 1947—the 31st of January, the 6th of June, of 1947, and [fol. 34] February 6, 1948.

The Clerk: Defendants' Exhibits 5, 6 and 7.

Q. I will hand you what have been marked as Defendants' Exhibits 5, 6 and 7, and ask you if they are copies of the Washington Teamster?

A. Yes, they are.

Q. This one is dated January 31, 1947?

A. Yes sir.

Q. And this one is dated June 6, 1947?

A. Yes sir.

Q. And the next issue after that is dated February 6, 1948?

A. That is right.

Q. Does the business of the plaintiffs appear in all of these issues?

A. I believe all but the last one.

Q. Which is the one dated February 6, 1948?

A. Yes.

Q. And they began to picket about a week following that?

A. The card was removed then of the Atlas Auto Rebuild.

The Court: The last time the paper appeared was a week before?

Mr. Bassett: Yes, a week before.

Q. The name of the Atlas Auto Rebuild is canceled in this Exhibit 7, is it?

A. Yes.

Q. Is that right?

A. Yes.

Mr. Bassett: I offer all these in evidence, Exhibits 5, 6 and 7.

Mr. Jones: I object to them.

[fol. 35] The Court: Yes. They may be admitted.

(Copies of Washington Teamster referred to are admitted in evidence as Defendants' Exhibits 5, 6 and 7.)

Q. Showing you Exhibits 2 and 3 state whether the man who is patrolling there is the secretary?

A. Yes, it is.

Q. That is the sign that he wore?

A. Yes sir.

Q. Is that the identical sign or one like it?

A. It is the identical sign.

Q. What was your purpose in having that man patrol with that sign in the vicinity of the plaintiffs' place of business?

Mr. Jones: I object to that. It is self evident.

Q. What was the object?

The Court: He may state. You have charged them with maliciousness.

Q. What was the object?

A. For the past three years or possibly more the Atlas Auto Rebuild had been in business as a Union shop, and the Union card was there in the window.

Q. And you also advertised them here in the Teamster?

A. Yes, it was advertised in our paper.

Q. What were you trying to do?

A. Just inform the members of the Union and Organized Labor that the card was no longer there.

Q. That it was no longer a Union shop?

A. That is right.

Mr. Bassett: Cross examine.

[fol. 36] Cross examination.

By Mr. Jones:

Q. You were out on January 27th and took the card down?

A. I didn't take the card down?

Q. You asked for it and they gave it to you?

A. Yes sir.

Q. Your purpose is doing that was to advertise the fact that they were not a Union shop?

A. That is true.

Q. And you considered that it was not a Union shop from the date that the card was taken down, after you took it out?

A. That is right.

Q. And it was not a Union shop when you started to picket?

A. No sir.

Q. Is this a copy of the affidavit which you signed? Do you want to look at it?

The Court: Here is the original.

A. (Witness examines affidavit) Yes, that is it.

Q. You would say that A. E. Hanke wasn't a member after the card was taken away on January 27th?

A. Yes, he was still one. He was still working behind a picket line.

Q. I will ask you about this affidavit. I will ask you if it doesn't say: "Affiant says that between June 22, 1946, and January 27, 1948, the plaintiff A. E. Hanke was a member of the defendant Union and during all of that time he and the plaintiff copartnership enjoyed the benefit of membership in said Union and the business derived from said membership; that during the entire period just mentioned the plaintiffs enjoyed the benefits derived from [fol. 37] the use of the Union's shop card which they prominently displayed in the window of their place of business to attract the patronage of members."

And that ceased when you took the sign down January 27th?

The Court: You are asking him about the affidavit?

Q. You stated that in your affidavit that I just read here?

A. Yes sir.

Q. And then when the card was moved out he ceased getting any benefit from any Union members?

A. No. As far as his establishment, place of business, it was a known Union shop to all as members of my local Union. It was still known until we took it down there.

Q. How long ago had he paid his dues?

A. September.

Q. September of 1947?

A. Yes sir.

Q. After that date you considered it a nonunion shop, didn't you?

Mr. Bassett: What date?

Q. January 27, 1948?

A. That would be true. They were not conforming to Union regulations. And that was the reason that the picket was there, to let all people know that our card was not there any longer, just to advertise the fact that the card was removed.

Q. It is the policy of the Union to picket a shop where there is a Union member in there?

A. It depends upon their stand as to organized labor; yes.

Q. You say that is for the information of your members, [fol. 38] that it is not being run as a Union shop. Is it for the information of everybody?

Mr. Bassett: For the information of the American Federation of Labor and the public generally.

Q. Do you do it for the public generally?

A. Yes.

Q. Then the purpose of your theory is to keep the public out?

A. It is not to keep them out particularly, no.

Q. You say it is done for the general public?

A. It is just to tell and advertise the fact that it is a nonunion establishment. If people want to go into there we don't stop them.

Mr. Jones: I think that is all.

Redirect examination.

By Mr. Bassett:

Q. Did you tell any of these plaintiffs that all of them would have to join the Salesmens Local 882?

A. I don't recall that I did.

Mr. Bassett: That is all.

Q. (The Court) Do you recall making inquiry about the payment of back dues?

A. No.

Q. (The Court) Isn't there some regulation about that?

A. Yes, there is. They are delinquent after 90 days.

Q. (The Court) Do you say they are still in good standing?

A. They can be reinstated by us on payment of back dues to—

Q. (The Court) Then they can be regarded in good standing after 90 days?

A. That is right.

[fol. 39] Q. (The Court) You say for 90 days?

A. Yes.

Q. That is for 90 days they are in good standing?

A. Yes sir.

Q. After the 90 days, they still continue and can get back in good standing?

A. Yes sir.

Q. All they have to do to get in good standing is to pay their dues?

A. Yes.

Q. They don't pay an initiation fee and rejoin or anything like that?

A. No.

Q. (The Court) A. E. Hanke is the father of these boys?

A. Yes, the father.

Q. (The Court) Is he the man who said to take the sign away?

Q. No. It was the son.

Q. Didn't he say—How long were you there talking with them?

A. Half an hour, approximately.

Q. (The Court) Didn't he make any statement about being able to run their business?

A. No.

Q. (The Court) He never made any such statement?

A. No.

Q. (The Court) What was the position of the boys?

A. The boys?

Q. (The Court) Yes?

A. Their position was that they would run their business any way they saw fit.

Q. (The Court) And the old gentleman didn't say anything at all?

A. No. That is the reason I told them I would leave and let them talk it over, because I thought they would talk with the boys and the father together.

Q. (The Court) Did A. E. Hanke take any part in the conversation at all?

A. Yes, he did.

Q. (The Court) What did he say, if you remember?

A. He said it was up to the boys, it was for their views. I remember that.

Q. (The Court) Did he state that they were partners?

A. Yes, he did. He said they were partners.

Q. (The Court) That is A. E.?

A. Yes.

Q. (The Court) At the time you went out there, you knew they were not keeping up with the regulations—you stated you knew they were selling used cars?

A. I did.

Q. (The Court) You had never decided when you went up there to—You just went out there to investigate?

A. That is correct.

The Court: I see. That is all.

Recross examination.

By Mr. Jones:

Q. Now assuming that A. E. Hanke was then the owner, did he have the same benefits as an owner as an employee would have?

A. Yes sir.

Q. He would have the same?

[fol. 41] A. Yes.

Q. So that your men might bring in cars and trade in the shop?

A. According to what I said, he had the benefits he would get from the advertising in the Union publication.

Q. But that advertising ceased on the last issue here, February 6th?

A. But he—

Q. And this picketing began on February 12th?

A. Yes sir.

Q. And the card was taken out of the window on January 27, 1948?

A. Yes sir.

Q. You didn't consider him a member after that?

The Court: As to the regulation, you said that any member who was in arrears that he had a right to reinstate himself and he wasn't considered a new member?

A. That is correct.

Q. (The Court) By paying back dues he could reinstate himself?

A. Yes sir.

Mr. Jones: That is all.

Redirect examination.

By Mr. Bassett:

Q. He asked you about delinquency?

A. Yes.

Q. He could take care of that delinquency by paying his dues?

A. Yes, he could.

Mr. Jones: I object to that as immaterial.

[fol. 42] * Mr. Bassett: I am trying to show that he had his benefits.

Q. He had let them run several months, and he could wait a month or two or three months of delinquency and he could have time to raise it and keep getting the benefits?

A. He could get reinstated by paying his dues.

Recross examination.

By Mr. Jones:

Q. There wasn't a member of the Union in the business of the plaintiffs here?

A. Yes, he was an owner of the Atlas Auto Rebuild.

Q. (Mr. Bassett) Was that the first time that an owner was a member of the Union?

A. No sir.

Q. He had to be reinstated in the Union again in case he wanted to get in good standing there?

A. No.

Q. He hadn't been since September, 1947?

A. All he had to do to get in good standing was to pay his dues.

Q. (The Court) He had not paid any since September?

A. No. He was delinquent in the payment of the October 1st dues.

Q. (The Court) His dues for October had not been paid?

A. They had not been paid.

Q. And he had not been reinstated by them?

A. He had not been fired. He was subject to—

Q. Just answer my question.

Mr. Bassett: I think he is—

[fol. 43] The Court: He was asked if he wasn't in good standing and he answered he could get in good standing by paying his back dues, that he had not been fired,

Mr. Jones: But he had not been reinstated.

● Mr. Bassett: I think that is a direct answer.

● The Court: Any further questions?

Mr. Bassett: No.

The Court: Any further questions?

Mr. Jones: No.

The Court: We will take ten minutes recess.

(Recess)

Mr. Bassett: I would like to ask some further questions.

Redirect examination.

By Mr. Bassett:

Q. As a member of your Union is Mr. Hanke entitled to any other benefits in addition to what you testified to?

A. Yes. He has the benefits of the insurance program, \$1,000 per member.

Q. That is life insurance?

A. Yes.

Q. That is paid to his beneficiary at death?

A. That is right.

Q. All members enjoy that benefit?

A. Yes sir, they do.

Q. And had he lost that benefit by being delinquent in the payment of his dues?

A. No, he had not.

Mr. Bassett: That is all.

[fol. 44] Recross examination.

By Mr. Jones:

Q. Isn't it the policy in most Unions, you are entitled to the benefits when delinquent until 90 days have passed?

Mr. Bassett: I object to that question.

The Court: The question here is this Union.

Q. If he had been delinquent for 90 days or four months and then pays is he still entitled to the benefits?

A. Yes sir. May I explain that?

Q. Yes.

A. If he is behind in his dues and it is on account of sickness he is voluntarily carried, and in case he dies in the meantime he gets his \$1,000. In our insurance program he gets his insurance carried.

Q. (Mr. Bassett) That is group insurance, isn't it?

A. Yes, with the Occidental Life Insurance Company.

(Scribble)

Q. But if reinstated after 90 days he has a fine to pay in addition to paying his dues?

A. Yes; that is correct.

Q. What is the fine?

A. Fifty cents a month. That is not done in case any member is in arrears when he pays on this insurance program.

Mr. Jones: That is all.

Redirect examination.

By Mr. Bassett:

Q. And when the fine is paid, that is all he has to do?

A. Yes.

Mr. Bassett: That is all.

(Witness excused.)

[fol. 45] RALPH REINESETSEN, called as a witness on behalf of the Defendants, being first duly sworn, testified as follows:

Direct examination.

By Mr. Bassett:

Q. State your name.

A. Ralph Reineetsen.

Q. What do you do?

A. Business representative of Local 882.

Q. Local 882 of the Teamsters Union?

A. Yes.

Q. What type of employees are the members of that Union? What type of employees does it take in, what business?

A. Auto salesmen and then we have owner-operators. Most of the used car dealers are owner-operators.

Q. Most of the used car dealers are owner-operators?

A. Yes sir.

Q. What do these owner-operators do?

A. They own and run the business.

Q. They do their own buying and selling?

A. Yes, and others employ salesmen and they join the Union.

Q. What is the proportion of your owner-operators to your total membership?

Mr. Jones: I object to that as incompetent, irrelevant and immaterial.

The Court: He may answer the question. Objection overruled.

A. Let me qualify that. I want to get it right. The proportion of the membership of the owner-operators is 20 per cent, but the proportion of the owner-operators in the used car dealers is about 95 or 96 per cent.

[fol. 46] Q. I am asking about the used car dealers. What proportion do they run, including the number that do their own sales and operate their own lots and have employees?

A. I would say that we have 101 used car dealers in town, and we have one—we have two dealers who are owners, I think they are dealers and owners—

Q. (The Court) He asked you what proportion of the used car people?

A. That is what I am speaking of.

Q. Of the owner-dealers who are members of the Union who are selling and working for somebody else?

The Court: I don't understand the question.

A. That is what I want to be sure to get the answer straight. The majority of the salesmen are new car salesmen.

Q. I see.

A. But the majority of the used car dealers—we have 101 used car dealers in town and we have I think 99 with their own operations.

Q. And the other two are employers who employ others to do their selling?

A. No.

Q. What do they do?

A. We have three or four who employ two or three salesmen.

Q. How many used car dealers do you have who you have contracts with who employ members of your Union to sell used cars?

A. About five.

Q. And about how many employes do these five employ?

A. About ten.

Q. About how many members of your Union altogether [fol. 47] are engaged in selling used cars, including the owner-operators?

A. 115 roughly.

Q. And all but ten of these are owner-operators, and the others are employed to sell?

A. That is right.

Q. Handing you Defendants' Exhibit 8 for identification, I will ask you to state what that is.

A. That is our salesmen—that is the contract between the salesmen and also the car—independent car dealers and the King County dealers.

Q. That is the contract that your Union has with these people that you have just mentioned?

A. Yes sir.

Mr. Jones: I object to that as immaterial.

Mr. Bassett: That is the working conditions as set forth today. That is the purpose of it. I offer it in evidence.

The Court: Admitted.

(Contract referred to is admitted in evidence as Defendants' Exhibit 8.)

Q. Now will you turn to the page that covers the used car dealers agreement that has anything to do with the hours of employment or the hours of work that used cars are permitted to be sold under the agreement. Where does that appear?

A. Pages 16 and 17.

Q. (Mr. Jones) Could the Union sales conform to that contract where they don't belong to the Union but entered into a contract?

A. Yes.

[fol. 48] Q. Besides that this applies where there is an independent used car dealers agreement?

A. A used car dealer both and an independent owner.

Q. That is with reference to an owner-operator?

A. Yes.

Q. Who is a member of your Union?

A. Yes.

Q. Then pages 16 and 17 of this pamphlet, Defendants' Exhibit 8, relate to this operation? Is that right?

A. Yes sir.

Mr. Bassett: I would like to read this into the record:

The Court: Very well.

Mr. Bassett (reading): "It is hereby mutually agreed by and between the Independent Automobile Dealers Association, Inc., and the Automobile Drivers and Demonstrators Local No. 882, affiliated with the American Federation of Labor and chartered by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America with reference to working conditions, hours of employment, commissions and drawing accounts, as follows:

"1. That all show rooms and used car lots will close not later than 6:00 p. m. on all week days and shall be closed on Saturdays and Sundays and the following holidays: New Year's Day, Washington's Birthday, Memorial Day, Fourth of July, Labor Day, Armistice Day, Thanksgiving Day and Christmas Day, or days observed as such holidays. Each dealer agrees to place in a prominent place on his [fol. 49] used car lot or building a conspicuous sign reading 'Closed Saturdays, Sundays and Holidays.' These provisions relating to closing shall not apply during the general automobile show or used car show sponsored by the Association. Saturday and Sunday work will be permissible on such Saturdays and Sundays as are mutually agreed upon between the Association and the Union."

Mr. Bassett: I offer that in evidence.

Mr. Jones: I object to it.

The Court: I have already admitted it in evidence and allow you an exception.

Mr. Bassett: That is all.

Cross Examination

By Mr. Gere:

Q. Do the plaintiffs in this case belong to the independent operators?

A. Yes.

Mr. Bassett: Association?

Q. You understand me all right?

Mr. Bassett: I don't understand your question.

Q. Do the plaintiffs in this case belong to the independent operators?

A. As far as I know, no.

Q. This contract that you refer to is simply a copy of one that you have with each of these?

A. That is entered into with two or three dealers associations, association members, in consideration with the agreement with the dealers, association members, and where they don't belong to the association we have an [fol. 50] agreement with them individually.

Q. (The Court) That is any individuals who sell cars, you go and make deals with them?

A. Yes; to an association. Where they don't belong to it we sign a separate agreement with them.

Q. (Mr. Bassett) You are talking of the employers?

A. Employers, yes.

Q. Do you have such an agreement with the plaintiffs in this case?

A. No sir.

Q. How long have you been familiar with the present owners of this operation, the plaintiffs in this case?

A. I went down to see them possibly ten months ago the first time and the only time I went down there.

Q. You knew they were then operating the business as a partnership?

A. They told me so, yes.

Mr. Gere: That is all.

Mr. Bassett: That is all.

(Witness excused.)

D. W. MARSHALL, called as a witness on behalf of the Defendants, being first duly sworn, testified as follows:

Direct examination.

By Mr. Bassett:

Q. State your name, please.

A. D. W. Marshall.

Q. What are your duties?

A. Automobile salesman.

[fol. 51] Q. You are a member of the Teamsters Local 882?

A. I am.

Q. Have you ever been an officer or employee of the Union?

A. I was.

Q. What?

A. I was employed as business agent until the first of this month.

Q. And were you business agent in the months of January and February of this year?

A. Yes.

Q. In your capacity as business agent of that Union did you go to the place of business of the Atlas Auto Rebuild with Mr. Klinge upon January 27, 1948?

A. I did.

Q. How did you happen to go down there? Did you have any information about the sales of used cars there?

A. Yes, I did. We got reports that came in. I don't know who brought them in, but we were told they were selling cars on Saturdays and Sundays. And so we went down and Mr. Klinge and I found he was right on that.

Q. From whom you got that information is immaterial, but this man was a member of Local 309?

A. Yes.

Q. To whom did you talk when you got down there and which did the talking?

A. Mr. Klinge.

Q. Did you advise any of these plaintiffs, the Hanke partners, that they had to join Local 882, the Salesmens Union?

A. No sir.

[fol. 52] Q. Did you make any statement concerning their conforming with the hours of work?

A. I did.

Q. In the sales of automobiles?

A. I did.

Q. What was said in that connection?

A. I said it was unfair competition to the other parties who closed at six o'clock and closed on Saturdays and Sundays and on holidays.

Q. Did you tell them that your Union had contracts with other dealers that required their closing?

A. Yes sir.

Q. What was said in answer to that?

A. They said they didn't feel like belonging to any union. That once the father did, he was a member when he was a mechanic, and he wasn't going to do it. The father once had been a sheet metal worker, and said that he wasn't a Union member any longer, and they didn't intend to be.

Q. Did they refuse to conform to the hours of employment in connection with the sale of automobiles?

A. Certainly. They were open Saturdays and Sundays.

Q. Did they say they were going to continue to do that?

A. They did.

Q. What did Mr. Klinge say to that, if anything?

A. He said that—Mr. Klinge stated that was unfair competition to all of the other dealers, unfair to the others in the location, that he was not conforming to the hours that the others had in the same location.

Q. With others in the Union?

A. Yes sir.

[fol. 53] Q. State whether or not Mr. Klinge mentioned the shop card that was displayed there then?

A. I don't think he did. That was brought out I think by themselves.

Q. Did he say anything about withdrawing that if they continued to stay open during these times?

A. Yes, he did.

Q. What did the Hanks say?

A. They said they might as well take the card out then.

Q. Did they take it down and give it to him?

A. They took it down and gave it to him. Mr. Hanke went up behind the counter I believe and took it down and said it was no use.

Q. They said it was no use?

A. Yes sir.

Mr. Bassett: Cross examine.

Cross examination

By Mr. Gere:

Q. Did you authorize the picket to go out there?

A. I did.

Q. Why?

A. I had no trouble with them.

Q. You didn't tell them to get out?

A. No.

Q. Did you tell the plaintiffs that if they didn't agree to that contract that you had that you would break them?

A. No sir.

Q. What did you tell them that you would do?

A. I didn't tell them I would do anything. I told them [fol. 54] that wasn't my business and I couldn't tell them how to operate their business, that all I could do was to throw out a picket, and they pointed out there that wouldn't do any good. That was the only conversation about a picket I made. While I was there they themselves said that.

Q. You knew that it was your purpose at that time to picket the place if they did not conform?

A. It was.

Q. When did you send this man over to picket the place?

A. I didn't know that until after the pickets were sent there.

Q. That the pickets had been there?

A. I didn't know of it until they were told to go out there.

Q. When was that?

A. Some days later. I don't know just what date.

Q. You have no idea?

A. I have no idea.

Q. Did you say anything to them about joining the dealers organization?

A. It was supposed that all used car dealers should do that to be in good standing with the auto salesmen.

Q. And the purpose of the picketing was to compel them to join that organization?

A. No.

Q. Or to compel them to work as salesmen with you?

A. No.

Q. Nothing like that at all.

A. The purpose of the picketing was if they could sell through a Union shop card they would like to before this happened.

[fol. 55] Q. (The Court) It was designated a Union Shop then, wasn't it?

A. Well now, that is how you come to look at it, but it was not that then.

Q. As far as you were concerned it was a nonunion shop?

A. Yes, when there was a shop card in there, yes, sure.

Q. Why did you remove the shop card if you didn't know it was a nonunion shop?

A. That is the way I would interpret it.

Mr. Bassett: Anything further?

A. Just one more question. Did you have a proposed written agreement for these people to sign?

A. I did not.

Q. Did you give them the outlines of a written agreement?

A. No.

Mr. Gere: That is all.

Mr. Bassett: That is all.

(Witness excused.)

Mr. Bassett: No further evidence. The defendants rest.

The Court: Have you any rebuttal?

Mr. Gere: Yes, Your Honor.

[fol. 56]

Plaintiffs' Rebuttal.

A. E. HANKE, called as a witness on behalf of the Plaintiffs, being first duly sworn, testified as follows:

Direct examination.

By Mr. Gere:

Q. (The Court) What is your name?

A. A. E. Hanke.

Q. Mr. L. J. Hanke is your son?

A. Yes sir.

Q. During the course of the trial it was stated that you had been a member of the Teamsters Union No. 309?

A. Yes sir.

Q. When did you pay your last dues to the Union?

A. It was in September, I think.

Q. (Mr. Bassett) Of what year?

A. Of 1947.

Q. Do you recall on January 27th of this year when a number of members of the Auto Union were out to your place of business?

A. Yes sir.

Q. You were one of the members of the firm doing business as the Atlas Auto Rebuild?

A. Yes sir.

Q. And you told them at that time that you were not going to pay dues?

Mr. Bassett: It is very leading and I object to it.

The Court: Yes. Objection sustained.

Q. Was anything said at that time about taking away the [fol. 57] Union card?

A. Yes.

Q. What was said about your Union membership?

A. They said if we didn't join the Car Salesmens Union they would take their Union Card off.

Q. What did you say about reinstatement, if anything?

A. I told them I would never reinstate again.

Q. And then after that what did they do while there?

A. They wanted the owners, all of them to join the Salesmens Union.

Q. And you said that you didn't intend—that you had no intention to reinstate in their Union?

A. No sir.

Q. Are you referring to something that was said on the 27th of January in the discussion about joining the Car Salesmens Union?

A. How is that?

Q. Do you refer with reference to this statement about joining the Car Salesmens Union, that subject was discussed on January 27th of this year?

A. Yes sir.

Q. And with whom?

A. Mr. Park, the man sitting over there, that we would have to join the Union, the Car Salesmens Union.

Q. All of the boys would have to join the Car Salesmens Union?

A. Yes sir.

Q. What did you say in turn?

A. We said we couldn't join it, we could not make it out by doing those hours, we were not big enough to do that.

[fol. 58] Mr. Jones: That is all.

Cross examination.

By Mr. Bassett:

Q. These other dealers that you have spoken of had used car shop cards?

A. Yes sir.

Q. Didn't you know that under the contract they had with the other dealers of used car lots they were closed on Saturdays and Sundays and after six p. m.?

A. No, There was no such contracts with other dealers.

Q. Didn't he tell you that the contracts with these other dealers was subject to rules and regulations they had to follow?

A. He said they had contracts with them.

Q. And didn't he tell you these dealers were members of the Union?

A. Yes, he did.

Q. Signed contracts with the Union?

A. There was some of them did have contracts and some of them didn't.

Q. And the chief thing he was doing was to ask you to conform to those regulations for opening and closing?

A. I think that would be the object, yes.

Q. That was their only complaint, wasn't it? Wasn't that their only complaint?

A. That is what they said about that.

Q. They didn't ask anything about wages or other conditions of employment, did they?

A. No.

[fol. 59] Q. They didn't complain about anything else, did they?

A. No.

Q. How long have you been a member of a Labor Union?

A. I joined in 1941. I belonged to the Union in the ship yard in 1941.

Q. The Boilermakers Union?

A. Yes.

Q. When did you join the Teamsters Union, 309?

A. We took that over on the 15th of June. It must have been somewhere in the latter part of June or the first of July.

Q. (The Court) In 1946?

A. Yes, in 1946.

Q. You were operating this place of business together with your sons, were you?

A. Yes sir.

Q. Did you buy that business from somebody else or did you open it up?

A. We bought it.

Q. And it was being operated as a Union shop when you bought it, wasn't it?

A. I think so. It had a card in the window.

Q. When you bought it did anybody come to see you about continuing your membership?

A. No, I don't recall that.

Q. Did you have any discussion?

A. Yes.

Q. What did you speak about? What did you tell them?

A. We told them the shop had been run as a Union shop.

Q. And you wanted to continue it?

A. And we wanted to continue it.

[fol. 60] Q. They did come out to see you?

A. Yes sir.

Q. And they continued to leave the Union shop card in the window?

A. That is right.

Q. The Union shop card that was in the window until January 27, 1948, was similar to this one in evidence as Defendants' Exhibit 1?

A. That is right.

Q. And your sons invited them to remove it on that day, didn't they?

A. No.

Q. They didn't?

A. No.

Q. You want to say it was after that time?

A. That was long after. They said that when they said they would remove it if we didn't join the Car Salesmens Union.

Q. Who was the one that was to join the Salesmens Union, you or who?

A. He didn't specify anybody.

Q. He didn't specify anybody?

A. No. We were all in the partnership.

Q. Did you understand that all of you had to join?

A. We didn't know.

Q. Did you ask?

A. No.

Q. You had worked as a member of the Teamsters Union?

A. Yes sir.

Q. These men were asking you to join the Car Salesmens Union, were they?

[fol. 61] A. I don't know who they were asking us to join.

Q. You didn't take the trouble to find that out?

A. No.

Q. Did you ever ask them whether—if you conform to the hours designated according to the Car Salesmens Union regulations that would be sufficient to satisfy them?

Mr. Gere: I object to the form of the question. The witness testified to what he did say.

The Court: It is cross examination.

Mr. Gere: He is assuming that was said.

Q. I asked if he asked them that question. Did you ask them whether that would satisfy them if you closed at six o'clock in the evenings and didn't sell used cars on Saturdays and Sundays and holidays?

A. No.

Q. You did not ask them that?

A. No.

Q. If that was all they wanted would you have been satisfied to continue out there as a Union shop?

Mr. Gere: I object to that.

The Court: Objection overruled. Let him answer. The question was if you were willing to conform to the hours they specified as they contended for a Union shop would you be satisfied.

Q. Without joining the Salesmens Union, would that satisfy you?

A. I didn't get that?

The Court: Would you have been satisfied to conform to those rules, if you still could work until six o'clock week days and kept closed on Saturdays and Sundays and holidays [fol. 62] and display the Union card but not—

A. What was that question, to not join the Union?

Q. But not join the Car Salesmens Union?

A. No, I would not.

Q. (The Court) Your position is that you can't stay in business unless you work these extra hours?

A. That is right.

Q. And that has nothing to do with membership in the Union? You don't want to conform to the hours?

Mr. Jones: I object to that. He has already answered it.
The Court: I think that is the inference.

Q. All right. I was trying to make that plain. Before the 27th of January did you ever say to any of the members of the Teamsters Union—to any officers of the Teamsters Union that you wanted to withdraw?

A. No. I don't believe I did.

Q. Did you tell anybody that you wanted to withdraw on January 27th?

A. Yes. That was on the day they took the card?

Q. On the day they took the card?

A. Yes. I told them then they could take the card, and they took it.

Q. You haven't got your withdrawal card?

A. No, I haven't.

Q. You have a withdrawal card?

A. Yes, I have it unless they canceled it.

Q. You still have it in your possession?

A. Yes sir.

Q. If you paid a pay sticker is put on there, isn't it?
[fol. 63] A. What is that?

Q. Do you still have the pay sticker that is put on when you have paid your dues?

A. Yes.

Q. If you get delinquent any time up to 18 months you would be a member of the Union?

Mr. Jones: There was no direct examination on that.

Mr. Bassett: He put a question on that.

The Court: Let him answer.

Q. After you make up the back payments when you just get behind, you continue to be in the Union by paying your dues?

A. Oh, no. Sometimes you are or sometimes you are not.

Q. Your recollection is that you were some two or three months back in your dues, were you?

A. That is right.

Mr. Bassett: That is all.

Redirect examination.

By Mr. Gere:

Q. Did you ever know that you could go behind more than three months?

A. No. I never went a year and three months.

Q. You never did?

A. That is right.

Q. What is the provision of the Union regulations as to delinquent payments for 90 days?

A. You are automatically out of the Union and your insurance is canceled if you don't keep up your Union dues and if you were not in good standing.

[fol. 64] Q. And you had paid your dues to September, 1947?

A. That is right.

Q. Have you said you wouldn't reinstate since January 27, 1948?

A. Correct.

Q. And you never have desired to even?

A. That is right.

Mr. Gere: That is all.

Recross examination.

By Mr. Bassett:

Q. You have the same benefits of your membership in the Union?

A. Not after—

Q. When you are a member?

A. Yes.

Q. And all of the benefits are reinstated that have ceased upon paying the delinquent dues? Isn't that right?

A. I don't know whether it is or not.

Q. Have you ever inquired?

A. No sir.

Q. Nobody told you that before, did they?

A. No.

Mr. Bassett: That is all.

Mr. Gere: That is all.

By the Court:

Q. At the time Mr. Klinge and Mr. Marshall were there—you recall they came out there?

A. Yes.

Q. And you four partners were talking—all six of you [fol. 65] were talking there?

A. I don't know whether there were six or not. They were talking to us there.

Q. There was A. E. Hanke, L. J. Hanke, R. R. Hanke and R. M. Hanke?

A. I am A. E.

Q. You are the father and the others are your sons?

A. Yes sir?

Q. Do you recall the occasion of these gentlemen visiting your place the 26th of January this year? Is that right?

A. Yes.

Q. And you don't remember whether your sons were all there?

A. There were two of them there.

Q. They were there?

A. There were two ones I think of there and myself, and they may all have been there.

Q. You were there all of the time?

A. Yes, I was there all of the time.

Q. At the time Mr. Klinge and Mr. Marshall were there you were always present while they were talking?

A. Yes.

Q. And you did some of the talking yourself?

A. Yes. Mr. Klinge did most of the talking.

Q. Did either of them ask you about paying up your dues?

A. No.

Q. They didn't say anything about your being delinquent?

A. No.

Q. Was there anything that you recall said that you would not pay up your dues?

A. After I said, "You take up the card if you want to." [fol. 66] Q. What did you say?

A. I said, "If you boys care about it, then we can pay the dues."

Q. That was all that was said about paying dues?

A. Yes.

Q. Did you protest against their taking the card?

A. No sir. All our protest was on belonging to the Car Salesmens Union.

Mr. Bassett: What is that?

(Answer read.)

Q. To the Car Salesmens Union?

A. Yes sir.

Q. Did they insist on your belonging to it, say all of you would have to?

A. They said we will take your Union Card out unless you are affiliated—the Car Salesmens Union is affiliated with the Teamsters and if we didn't join the Car Salesmens Union they would have to take the card out of the Union.

Q. They did not make any threat about picketing?

A. No; after that there was a picket there.

Q. All they said was they would have to take the card away?

A. Yes.

Q. Unless you joined the Car Salesmens Union?

A. That is right.

Q. They didn't say whether or not you would all have to join or just one?

A. No.

By Mr. Bassett:

Q. During the time you were a member of the Teamsters [fol. 67] Union, did you receive a weekly copy of the Washington Teamster, such as Exhibits 4, 5, 6, and 7?

A. There were many Union Teamsters over there.

Q. That is sent out weekly, isn't it, a copy sent each week?

A. I don't know whether it is sent out each week. I have seen copies.

Q. You got a copy?

A. Yes.

Q. Did you ever look at it?

A. Once in a while I did.

Q. Did you ever look at it and see that your place of business was advertised as a Union place?

A. No. I didn't know that.

Q. You never noticed that?

A. No.

Q. Did you ever notice this particular page (looking at

copy of Washington Teamster)—this happens to be one after they took the card out—but showing you this one, is this the business address of the Atlas Auto Rebuild, 800 Rainier Avenue? Isn't that right?

A. Yes, it is, 800 Rainier.

Q. You tell me that all the time when you got this paper you didn't see the name of your business advertised in that paper?

A. That is right.

Q. All of that period didn't you ever read that paper?

A. How is that?

Q. During that time did you ever read the paper?

A. Yes, I read part of it.

Q. Didn't you ever read the ads?

[fol. 68] A. I didn't read ads, no.

Q. You didn't read this page about the Union shops?

A. No.

Q. You were not interested about whether you were being advertised in there?

A. I didn't say that.

Q. Did either of the representatives of the Union when they were out there January 27th say they would go away and ask you to talk it over with your sons for a while and they would come back in a little while?

A. Yes, they did.

Q. What did you say in answer to them?

A. They told me that if we didn't belong to the Union—

Q. What did they say about their coming back and that you could talk it over with your sons?

Mr. Jones: Let him answer.

Q. What did you say? Did you answer them or didn't you?

A. I don't know. I believe it was Russell that answered them.

Q. What did he say?

A. He said they might as well take it right now.

Q. They might as well take it away?

A. Yes.

Q. Did your sons and you talk about it?

A. Yes.

Q. Did you make any statement to any representative of

the Union that day that you were going to leave it to your sons to decide what was to be done?

A. No.

Q. If the Union would not require any of you to become [fol. 69] members of the Salesmens Union would you be willing to comply with the hours of that organization if the Union Shop would be restored?

A. No sir.

Q. And the picketing ceased?

A. No sir.

Q. You would not?

A. No.

Mr. Bassett: That is all.

Mr. Gere: That is all.

(Witness excused.)

Mr. Jones: We have no further testimony.

Mr. Bassett: That is all.

Testimony closed.

Thereupon the case was argued to the Court and at the conclusion of the argument taken under advisement.

[fol. 70]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON,
FOR KING COUNTY

No. 392989

A. E. HANKE, L. J. HANKE, C. R. HANKE AND R. M. HANKE,
copartners doing business under the name and style of
ATLAS AUTO REBUILD, Plaintiffs,

vs.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS UNION, LOCAL 309, AND
DICK KLINGE, its Business Agent, and MEL ANDREWS, its
Secretary, Defendants.

MEMORANDUM OPINION—March 9, 1948

The plaintiffs instituted this action for the purpose of securing an injunction against the defendants from picketing their place of business and to recover damages.

The complaint alleges that the plaintiffs are copartners doing business under the trade name and style of Atlas

Auto Rebuild at 800 Rainier Avenue, Seattle, Washington; that they do not have any workmen in their employ, doing [fol. 71] all the work themselves and sharing equally in the profits of the business; that there is no labor dispute at their plant or any dispute regarding wages, hours, or conditions of employment, and that they have no employees, and particularly no member of the defendant union is employed by the plaintiffs; that commencing with the 12th day of February, 1948, the defendants have caused plaintiffs' business to be picketed and that as a result of such picketing plaintiffs are suffering irreparable injury and damage to their business and that, unless further picketing be enjoined, further damage will result:

Based on this complaint and an affidavit of similar import, a restraining order and order to show cause was issued out of this court on the 24th day of February, 1948, returnable on the 2nd day of March, 1948. The matter was assigned to this department of the court for hearing on said date, on which day the defendants filed a motion to dissolve the temporary restraining order and filed an affidavit of one Dick Klinge, business agent of the defendant union, in which he sets up that "Between June 22, 1946, and January 27, 1948, the plaintiff A. R. Hanke was a member of the defendant union." The affidavit went on further to allege that during the period just above mentioned the plaintiffs had enjoyed the benefits derived from the use of the union shop card which they had prominently displayed in the window of their place of business, and also that they had enjoyed the benefit of advertisements which the defendant union caused to be printed in its official [fol. 72] paper weekly and distributed to all members of the union throughout the State of Washington, and that as a result of the use of said shop card and advertising the plaintiffs had received a substantial amount of patronage from union men which they otherwise would not have received.

The affiant further recites that the defendant local is affiliated with another local known as No. 882, which union is comprised of persons employed in the Seattle area engaged in the business of selling used as well as new automobiles; that on or about the 12th day of January, 1948, said Klinge received a complaint from the secretary of Local No. 882 that plaintiffs were selling used automobiles in competition with members of the said Local No. 882 and

were not conforming to the union's working conditions, and that as a result of such complaint affiant went to the plaintiffs' place of business on January 27, 1948, and advised the plaintiffs that they were selling automobiles contrary to established union working conditions and that if they did not desist they would be required to remove the union shop card from plaintiffs' place of business and discontinue further advertising in the official paper, whereupon the plaintiffs delivered to the affiant the union shop card from their window, and the union ceased to publish in the official paper that the plaintiffs were operating a union shop, and "on or about the 12th day of February, 1948, caused a single person wearing a sandwich sign to walk along the sidewalk in front of and near plaintiffs' place of business, said sign bearing the legend 'UNION [fol. 73] PEOPLE, LOOK FOR THE UNION SHOP CARD' and a facsimile of the union shop card which had formerly been on display in plaintiffs' window."

In accordance with Rem. Rev. Stat., section 7612, the court heard the oral testimony of witnesses in support of the complaint and in opposition thereto. The facts developed at this hearing are as follows:

L. J. Hanke, C. R. Hanke and R. M. Hanke, who have been previously members of various unions, purchased a business known as Atlas Auto Rebuild at 800 Rainier Avenue, Seattle, Washington. These gentlemen acquired this business approximately two years ago. The previous owners of the business had had in the window of their plant a metal sign 11" x 7" with the insignia of the union, with the following wording thereon:

UNION SERVICE

INTERNATIONAL
BROTHERHOOD
OF TEAMSTERS
CHAUFFEURS

WAREHOUSEMEN
AND HELPERS
OF
AMERICA

(Insignia)

Affiliated with A. F. of L.

152309

Daniel J. Tobin
General President

John M. Gillespie
Gen'l Sec'y-Treasurer

This is the property of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America"

When the plaintiffs took over, the sign remained on display as before.

It does not appear that any of the above named brothers were members of the defendant union. For the first few [fol. 74] months of their operation of the business they did have some sheet metal workers who were union members. It does not appear that they were members of the defendant union. Late in the fall of 1946 these employees were laid off, and the plaintiff A. E. Hanke, father of the other plaintiffs, joined the firm. On June 22, 1946, he had joined the defendant union. Up until the time of the termination of the O. P. A. the partners had conducted the business of auto repairing, auto rebuilding and operating a gas station. With the ending of the O. P. A. in June, 1946, they added to their business that of selling used cars. The Automobile Drivers and Demonstrators, Local Union No. 882, a branch or subdivision of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers Union, Local No. 309, had on the 12th day of June, 1946, entered into a contract with the Independent Automobile Dealers Association, the first clause of which working agreement reads as follows, (Deft. Ex. 8):

"1. That all show rooms and used car lots will close not later than 6:00 p. m. on all week days and shall be closed on Saturdays and Sundays and the following holidays: New Year's Day, Washington's Birthday, Memorial Day, Fourth of July, Labor Day, Armistice Day, Thanksgiving Day and Christmas Day or days observed as such holidays. Each dealer agrees to place in a prominent place on his used car lot or building, a conspicuous sign, reading 'Closed Saturdays, Sundays and Holidays.' These provisions relating to closing shall not apply during the general automobile show or used car show sponsored by the Association. Saturday and Sunday work will be permissible on such Saturdays and Sundays as are mutually agreed upon between the Association and the Union."

It appears from the testimony of Mr. Ralph Reinerstead, [fol. 75] business agent of said local 882, that this agreement covers 115 used car dealers in the Seattle area, and that all but ten of them are their own operators and have no employees.

The plaintiffs, in entire disregard of the above quoted provisions of the working agreement between the automobile salesmen and the Independent Automobile Dealers Association, sold cars on Sundays, Saturdays, holidays and after 6:00 o'clock at night. At all times up to the 27th day of January, 1948, the large metal card above described was kept on display in the place of business of the plaintiffs, and in the weekly official publication known as The Washington Teamster there appeared the following under a large heading "Patronize these firms; protect jobs for Union Teamsters" and in smaller type underneath the above "Here's a list of places displaying the Teamsters Shop Card in the Seattle district and where automotive service, gasoline and parking may be obtained;" Beneath these headlines are subheads in which the city is divided into different districts, and under the subhead "Industrial Area; South & W. Seattle" appears, among a long list of others, the name of the Atlas Auto Rebuild, 800 Rainier. These insertions appeared in the paper up to and including the 30th day of January, 1948. On the 27th day of January, 1948, Mr. Klinge and a Mr. E. W. Marshall, who was the business agent for Local No. 882, having had complaints against the plaintiffs for violation in regard to the hours referred to in the agreement between the dealers and Local No. 882, went to the place of business of the plaintiffs and [fol. 76] there conferred with all four of the partners. It does not appear that they insisted on the plaintiffs becoming members of Local No. 882 or Local No. 309, but merely protested as to their violation of the clause of the agreement heretofore referred to.

It should be stated at this time that A. E. Hanke who, as has been stated, was initiated into Local No. 309 in June, 1946, made his last payment of dues in September, 1946. It appears that the by-laws of the union provided that a member who failed to pay his dues for ninety days was not in good standing, but on payment of his back dues with an additional fifty cents for each month could be reinstated. The interview between Mr. Klinge and Mr. Marshall, representing the union, and the plaintiffs lasted about one-half hour. The main topic of conversation seemed to be that the agents of the unions would have to take down the shop card on display in the plaintiffs' shop unless they agreed to abide by the provision in the agree-

ment between the dealers and the union as to the working hours.

There does not seem to be much disagreement among the witnesses for the plaintiffs and the defendants as to the conversation at this interview. No threats appear to have been made by the agents of the union to the plaintiffs. All they said was that unless they would keep the hours they would have to take down the union shop card. The plaintiffs were firm in saying that they could not do so and continue in business. They insisted they would have to work longer hours than provided for in the agreement in order to keep in business.

[fol. 77] In regard to Mr. A. E. Hanke, Mr. Klinge testified on cross examination as follows:

Q. Did you tell him that he had to belong to the salesmen's Local No. 882?

A. I don't recall that I did.

Mr. Marshall testified as follows:

Q. Did you tell the plaintiff they would have to sign a contract?

A. No sir.

Q. What did you tell them they would have to do?

A. I didn't tell them they would have to do anything. I told them I couldn't carry on their business, I couldn't tell them what to do with their business. They said they didn't care how many pickets they put out, that they would continue with their business that way.

A portion of the testimony of Mr. A. E. Hanke, on direct examination, is as follows:

Q. Was anything said about taking the union card?

A. Yes.

Q. What was said about your union membership?

A. They were down there and said they were there to take the union card up.

Q. What did you say about reinstating, if anything?

A. I told them that I would never return to it again.

Q. Told them you would have nothing to do with it?

[fol. 78] A. I wanted to talk it over, and Russ joined in the conversation. We didn't intend to be reinstated in the union.

Q. You are referring to something that was said on the 27th day of January of this year? Did you refer to a statement on the 27th of January?

A. Yes.

Q. With whom?

A. Dick was there.

Redirect Examination.

Q. Had you stated you were not reinstated? Is that since January 27, 1948?

A. Yes.

Q. That is what you stated to the business agent?

A. Yes.

Despite the refusal of the plaintiffs to agree to keep the hours, the agents suggested to the plaintiffs that they think the matter over and they would return within an hour. The plaintiffs, however, stated that there was no use to do that as they could not continue in business unless they worked extra hours, whereupon one of the plaintiffs took the card down from the wall and handed it to Mr. Klinge, and the agents left with the shop sign.

Thereafter, on the morning of the 12th of February, 1948, a single picket appeared in front of the place of business of the plaintiffs which appears to be on a street corner. He had a sandwich sign which read the same in front and [fol. 79] in back as follows in large letters: "UNION PEOPLE LOOK FOR THE", and then a facsimile of the shop-card, and underneath it the words "UNION SHOP CARD." This picket patrolled up and down in front of the place of business of the plaintiffs, talking to people who entered. Just what was stated to them does not appear to have been heard by the plaintiffs, but he was observed to take down the numbers on the automobiles of the patrons of the plaintiffs. Immediately their business fell off, and drivers for supply houses refused to deliver parts and other materials to the plaintiffs, and plaintiffs were required, in order to get material, to go to the dealers in their own truck and secure such materials as they needed in the carrying on of their business. This single picket walked on both sides of the building between the hours of 8:30 in the morning and 5:00 in the afternoon. The business of the plaintiffs immediately fell off very heavily, and this action ensued.

The plaintiffs rely upon the recent case of *Gazzam v. Building Service Employees International Union, Local 262*, 129 Wash. Dec. 455, decided by the supreme court on December 22, 1947. In that case the plaintiff was the owner of a hotel and had fifteen employees consisting of an engineer, janitor, bell boys, clerks and a housekeeper. None of these employees belonged to the defendant union. There was no dispute between the owner of the hotel and his employees regarding wages, hours or conditions of employment.

In interpreting section 7612-13, subsection (c), Rem. Rev. [fol. 80] Stat., known as the anti-injunction act of 1933, our supreme court had consistently held that there was no labor dispute within the meaning of that act where no member of the picketing union was an employee of the employer. Despite contrary holdings in the federal courts in construing the Norris-LaGuardia Act, in 1935 our court first announced this rule in the case of *Safeway Stores v. Retail Clerks' Union, Local No. 148*, 184 Wash. 322. By a divided bench our supreme court refused to depart from this construction in a long number of cases which are set out in the *Gazzam* case, down to July 24, 1941. In that year the case of *O'Neil v. Building Service Employees International Union, Local No. 6*, 9 Wn. (2d) 507, was decided, and peaceful picketing was thereafter permitted, irrespective of the employer-employee relationship. However, this holding was not assented to by all of the supreme court judges.

On February 10, 1941, the United States Supreme Court, in the case of *American Federation of Labor v. Swing*, 312 U. S. 321, 61 S. Ct. 568, held that the constitutional guaranty of freedom of discussion is infringed by the judicial policy of a state to forbid resort to peaceful persuasion through picketing where there is no immediate employer-employee dispute. The effect of the ruling was to hold that a labor union could peaceably convey to the public at large the information that a certain business has been by labor unions declared unfair, and that as long as the picketing was peaceful, it could not be enjoined because there was no immediate labor dispute. After this decision by the supreme court of the United States, our supreme court, [fol. 81] by a divided court, as I have stated, held in the

O'Neil case that the ruling of the United States Supreme Court in the *Swing* case, being a ruling on the construction of the United States constitution, was binding on them and held that the defendant union was justified in picketing an employer who had no employees. This rule was followed up until the *Gazzam* case, referred to above. In that case by a divided court and by reasoning which I find somewhat difficult to follow, our supreme court reverted to the earlier rule of the *Safeway Stores* case, *supra*, as we have seen. It has generally been considered by the bar that the constitution of the United States is what the supreme court of the United States says it is.

Whether the holding of the *Swing* case is what the law ought to be, or whether the holding in the *Gazzam* case is in reality an overruling of the supreme court of the United States by a state supreme court upon a construction of the constitution of the United States, by which the state supreme court is bound, is, of course, not for me to say. I am sworn to enforce the law as laid down in the statutes and constitution and as interpreted by the courts of higher resort. The last expression of our supreme court on this question is found in the *Gazzam* case, and I must assume that I am bound to follow the holding of that case until *be* be reversed by the supreme court of the United States or changed by our supreme court, and under the holding of the *Gazzam* case there can be no question in my mind that the plaintiffs, having no employees represented by the [fol. 82] defendant union, or any employees whatsoever, are entitled to have the picketing enjoined. I must bow to the superior wisdom of the majority of the appellate court of this state.

The defendants contend that the *Gazzam* case is distinguishable, first, because there was no relationship with the union, and that here there was. It is contended that A. E. Hanke being a member, although he was not in good standing, nevertheless he had the right to be reinstated upon payment of his delinquent dues. From this it is argued that one of the partners was a member of the defendant union. In view of his statements to the representatives of the union at the interview on the 27th of January, 1948, that he would not reinstate, and at a time when his dues were more than 90 days delinquent, and in view of the further fact that the union took the shop card, and further,

in view of Mr. Klinge's affidavit of February 27, 1948, in which he avers as follows:

"That between June 22, 1946, and January 27, 1948, the plaintiff A. E. Hanke was a member of the defendant union."

I am satisfied that he was no longer regarded as a member by the defendant union after that date. That is evidenced further by the fact that the defendants not only took up the shop card, but immediately discontinued the advertisement in the official publication of the union that the plaintiffs' business was a union shop.

It is next contended that the case is distinguishable from the *Gazzam* case because in that case the majority opinion [Vol. 83] finds that the picketing there was coercive. This is predicated upon a detached statement in the *Gazzam* case at p. 465 of the opinion quoted from the case of *Carpenters and Joiners Union of America v. Ritter's Cafe*, 315 U. S. 722, 62 S. Ct. 807. All picketing is coercive. The word "picketing," of course, is taken from the nomenclature of war. The only purpose that I can conceive of picketing is for the purpose of compelling the person picketed to accede to the demands of the one doing the picketing. The picket certainly had some other purpose in his patrol than exercise. There is a distinction between peaceful picketing and picketing involving fraud or violence, but both are coercive. In this connection it is hard to conceive how picketing could be more peaceful than is presented here. It is true that the picket did take down the numbers of automobiles. This might be a form of intimidation, but it is quite vague. A timid man would apprehend that there was to be a follow-up from this minatory act. I cannot, however, see how the picketing here was any more coercive than it was in the *Gazzam* case. The same results seem to have followed in both cases. The plaintiffs could not secure deliveries, and while it is true that the banner did not say that the shop was on the unfair list, every intelligent person knows what a picket line means, and to say "LOOK FOR THE UNION SIGN" is only an indirect way of notifying the public that the plaintiffs' place of business was unfair to organized labor.

The next contention made by the defendants is that it is not strictly picketing; that the defendants are merely

[fol. 84] disabusing the minds of the public of an impression falsely created by the plaintiffs that they were a union shop. The word "picketing" connotes the posting of one or more members of a labor organization who seek to influence, by placards or banners carried by the pickets, the public against patronizing the place picketed. *Evening Times Printing & Publishing Co. v. American Newspaper Guild*, 199 Atl. 598.

Defendants argue that plaintiffs well knew that they were not entitled to keep the union card up in the shop and have the benefit of almost two years' advertising in the official publication of the union that they were a union shop, and that in fairness and justice, the union should have the right of protection of those against whom plaintiffs were unfairly competing, to inform the public of this fact. And I may say in passing that the clause in the working agreement regarding the hours heretofore set out, seems to me a fair, just and reasonable one. I have, on the whole, considerable sympathy with this contention of defendants, but I know of no law that prevents a man from working as many hours as he desires. It is true that in equity one must come in with clean hands. One who is guilty of fraud or violation of some law or some unconscionable conduct will not receive any help at the hands of equity, but this doctrine, however, can only apply where the conduct is contrary to public policy or is fraudulent or illegal. "The maxim refers only to willful misconduct. The conduct must be morally reprehensible as to known facts;" [fol. 85] 21 C. J. 184; 30 C. J. S. 842. While it is hard to believe that the plaintiffs did not know that they were receiving advertising to which ethically they were not entitled, still I cannot say that they were guilty of such fraud or morally reprehensible conduct as to deny them relief. It is not shown that they knew of the advertisement of their business in the defendants' paper. The sign which was displayed in the shop was one which was there when they came. It was not their property. They surrendered it on demand. Up until the fall of 1947 one of the partners was a member in good standing of the defendant union, although not a member when the picketing began. I do not believe that the conduct of the plaintiffs was such as to bring them within the doctrine of clean hands, so as to exclude them

from a court of equity. In fact, this particular point was not even argued at the hearing as being under the "clean hands" maxim.

It is next claimed that there is a petition for a rehearing pending in the supreme court in the *Gazzam* case, and that it being a five-to-four decision and six weeks having elapsed, that decision is not binding on the trial court as long as the petition for rehearing is pending. It is true that, as between the parties, the decision is not final as long as the petition for rehearing pends, but as I understand the law the opinions of our supreme court are published for the guidance of the lower courts and are to be followed by the lower courts as the law until changed by the supreme court. No authority to sustain the defendants' position on this point has been cited to me, and I can find none.

[fol. 86] It is further argued that the lower court is just as bound to follow the decisions of the supreme court of the United States as those of the supreme court of the state, and that I am free to hold that the *Swing* case applies rather than the *Gazzam* case. I am unable to follow this reasoning. It seems to me that such a view would lead to chaos. Rather, I think I am bound to follow the *Gazzam* case as the last pronouncement of our own supreme court until the same is changed either by our supreme court itself or by the supreme court of the United States by its mandate. Our supreme court is free to construe the opinions of the supreme court, and such construction binds the state trial court till the United States Supreme Court reverses the state supreme court.

Next, it is contended that the very recent case of *Berger v. Sailors Union of the Pacific*, 129 Wash. Dec., 748, has overruled or at least greatly weakened the *Gazzam* case. A careful analysis of that case indicates that the majority holding is based upon the fact that the plaintiffs were found not to be *bona fide* partners, but that the arrangement relied upon by them was a sham, colorable and unsuccessful device to avoid the existence of an employer-employee relationship; in other words, that certain members of the crew of the ship involved in that case were members of the union doing the picketing, and therefore necessarily there was a labor dispute under the doctrine of the *Safeway Stores v. Retail Clerks' Union, Local No. 148*, *supra*.

[fol. 87] Counsel pointedly calls attention to the fact that in the majority opinion in the *Gazzam* case this language occurs:

"The leading case cited with approval on many occasions, and never overruled, is *Safeway Stores v. Retail Clerks Union, Local No. 148*, 184 Wash. 322, * * * ."

And yet in the case of *State ex rel. Lumber, etc. v. Sp. Ct.*, 24 Wn. (2d) 314, 328, in an opinion joined in by the writer of the majority opinion in the *Gazzam* case, this language occurs:

"In *S and W Fine Foods v. Retail Delivery, etc. Union*, 11 Wn. (2d) 262, 118 P. (2d) 962, we followed *American Federation of Labor v. Swing, supra*, and overruled *Safeway Stores v. Retail Clerks' Union*, 184 Wash. 322 * * * ."

From this demonstrable contradiction it is argued that this court must presume that the *Gazzam* case will be speedily reversed, especially in view of the fact that it is only a five-to-four decision. While this argument might be very persuasive before the supreme court on the petition for rehearing, it can hardly be considered by me. As far as the lower court is concerned, a five-to-four decision is just as binding as an eight-to-one decision.

I have no hesitation in saying that if the matter was one of first impression, I would follow the ruling in the *O'Neil* case, *supra*, which was an appeal from my own decision and in which I was affirmed, but, as I have shown, it is not a question of first impression, and, feeling that I am bound by the decision in the *Gazzam* case, I must deny the motion to dissolve the temporary restraining order and grant an injunction *pendente lite*. Under the case of *Zaat v. Building Trades Council*, 172 Wash. 445, and particularly in view of the concurring opinion of Judge Schwollenbach in the *Gazzam* case, there can be no question that the defendants have the right to place the plaintiffs on the unfair list and to publicize that fact in their official paper, but, under the ruling in the *Gazzam* case, they may not picket the place of business of the plaintiffs.

I have attempted, as best I can, to analyze the rather in-harmonious decisions of our court on this general subject of peaceful picketing, and I can come to no other conclusion than that I am bound by the *Gazzam* case and that,

being so bound, I have no option but to issue a temporary injunction against the picketing until the case can be heard on the merits.

Under the provisions of Rem. Rev. Stat., section 7612-10, the defendants may summarily file with the supreme court this record, and the same can be heard with precedence over all other cases, or if they do not desire to do that, the matter may be quickly heard on the merits in this court.

I have this suggestion to make: Frankly, I am impressed with the argument that on the petition for rehearing in the *Gazzam* case there may well shortly eventuate a reversion to the rule in the *O'Neil* case. This I infer not alone from the strength of the arguments advanced and herein referred to, but also from the unusual length of time the petition has been pending in the supreme court. I would therefore suggest that the parties let the matter rest in *status quo* until this eventuality is determined, as it soon [fol. 89] must be. The defendants express supreme confidence that the *Gazzam* opinion will be shortly reversed. Plaintiffs stated at the hearing that they would be content to let matters stand pending that determination. Such a course would result in saving of time and expense. However, of course if either party insists on earlier action by this court, let such party submit findings, conclusions and a temporary restraining order pending trial on the merits in conformity with this opinion.

Dated this 9th day of March, 1948.

Donald A. McDonald, Judge.

[fol. 90] IN THE SUPERIOR COURT OF THE STATE OF
WASHINGTON

FOR KING COUNTY

No. 392989

A. E. HANKE, L. J. HANKE, R. R. HANKE and R. M.
HANKE, copartners doing business under the name and *style*
of ATLAS AUTO REBUILD, Plaintiffs,

vs.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS UNION LOCAL 309, and DICK
KLINGE, its Business Agent, and MEL ANDREWS, its Sec-
retary, Defendants.

STIPULATION AS TO DAMAGES

Be It Remembered that following the aforesaid pro-
ceedings this cause came on regularly for trial on the
merits on the 15th day of April, 1948, before the Honorable
Donald A. McDonald, one of the Judges of the above en-
titled Court; the plaintiffs appearing in person and by J.
Will Jones, Clarence L. Gere and H. C. Vinton; the de-
fendants appearing by Samuel B. Bassett and John Geis-
ness, their attorneys;

Whereupon the parties, through their counsel, stipulated
in open court that the cause be submitted to the Court for
final judgment on the merits on the evidence heretofore
taken on plaintiffs' application for a temporary injunction,
and the arguments submitted; and further stipulated that
plaintiffs have sustained damages in the amount of \$250.00
as a result of the picketing of plaintiffs' premises between
February 12 and February 24, 1948.

[fol. 91]

COURT'S CERTIFICATE

STATE OF WASHINGTON,
County of King, ss:

I, Donald A. McDonald, one of the Judges of the Superior Court of the State of Washington for King County, sitting in Department No. 12 thereof, and the Judge before whom the above entitled cause was tried, do hereby certify:

That the matters and proceedings embodied in the foregoing statement of facts are matters and proceedings heretofore occurring in said cause, and the same are hereby made a part of the record herein.

I do further certify that the same contains all the material facts, matters and proceedings heretofore occurring in said cause and not already a part of the record therein.

I do further certify that the foregoing statement of facts contains all of the evidence and testimony introduced upon the trial of said cause, together with all objections and exceptions made and taken to the admission or exclusion of testimony, and all motions, offers to prove and admissions and rulings thereon; and that Defendants' Exhibits 1 to 8, inclusive, hereto attached, are all the exhibits admitted upon the trial of said cause.

Counsel for plaintiffs and defendants being present and concurring.

Done in open court this 29 day of June, 1948.

DONALD A. McDONALD, Judge.

[fol. 92] IN THE SUPREME COURT OF THE
UNITED STATES

No. —

A. E. HANKE, L. J. HANKE, R. R. HANKE, and R. M. HANKE,
copartners doing business under the name and style of
ATLAS AUTO REBUILD, Respondents.

vs.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS UNION, LOCAL 309, and DICK
KLINGE, its Business Agent, and MEL ANDREWS, its Secretary,
Petitioners.

STIPULATION TO OMIT FROM PRINTED RECORD MATTERS NOT
ESSENTIAL TO CONSIDERATION OF QUESTIONS PRESENTED

It is hereby stipulated by and between the parties hereto,
through their undersigned attorneys of record, that the
following documents and papers in the certified transcript
of the record may be omitted from the printed record, for
the reason that they are not essential to a consideration of
the questions presented by the petition for writ of certiorari:

- (1) Injunction bond
- (2) Notice of appeal (to State Supreme Court)
- (3) Supersedeas and cost bond on appeal
- (4) Motion for order staying execution and enforcement of
judgment and fixing amount of supersedeas and cost
bond on petition for certiorari
- (5) Order staying execution and enforcement of judgment
and fixing amount of supersedeas and cost bond on
petition for certiorari
- (6) Supersedeas and cost bond on petition for certiorari
- (7) Stipulation concerning statement of facts and exhibits
- (8) Order concerning statement of facts and exhibits
- (9) Praecipe for record.

Dated at Seattle, Washington, this 16th day of August,
1949.

Samuel B. Bassett
Attorney for Petitioners

J. Will Jones
Attorney for Respondents

[fol. 93] SUPREME COURT OF THE UNITED STATES, OCTOBER
TERM, 1949

No. 309

ORDER ALLOWING CERTIORARI—Filed December 19, 1949

The petition herein, for a writ of certiorari to the Supreme Court of the State of Washington is granted. The case is transferred to the summary docket and assigned for argument immediately following No. 449, Building Service Employees International Union et al. vs. Gazzam.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Douglas took no part in the consideration or decision of this application.

(5947)

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1949

No. 364

see 309

AUTOMOBILE DRIVERS AND DEMONSTRATORS
LOCAL UNION No. 882, RALPH REINERTSEN, ITS
BUSINESS AGENT, ET AL., PETITIONERS,

vs.

GEORGE E. CLINE

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE
OF WASHINGTON

PETITION FOR CERTIORARI FILED OCTOBER 4, 1949.

CERTIORARI GRANTED DECEMBER 19, 1949.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No.

AUTOMOBILE DRIVERS AND DEMONSTRATORS
LOCAL UNION No. 882, RALPH REINERTSEN, ITS
BUSINESS AGENT, AND J. J. ROHAN, ITS SEC-
RETARY, PETITIONERS,

vs.

GEORGE E. CLINE

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT
OF THE STATE OF WASHINGTON

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**IN THE SUPERIOR COURT OF THE STATE OF
WASHINGTON IN AND FOR KING COUNTY**

No. 395781

GEORGE E. CLINE, Plaintiff.

vs.

**AUTOMOBILE DRIVERS AND DEMONSTRATORS LOCAL UNION No.
882; RALPH REINERTSEN, its Business Agent, and J. J.
ROHAN, its Secretary, Defendants**

COMPLAINT—Filed May 13, 1948

COMES NOW the Plaintiff and for cause of action against
the Defendants alleges as follows:

I.

That Plaintiff is the owner and operator of a used car
lot at 3126 Eastlake Avenue, Seattle, Washington. That
the Defendant AUTOMOBILE DRIVERS AND DEMONSTRATORS
LOCAL UNION No. 882 is an organized trade union with its
principal place of business in Seattle, Washington, and
RALPH REINERTSEN is its Business Agent, and J. J. ROHAN,
its Secretary.

II.

That Plaintiff does not employ any salesmen in con-
nection with the operation of his used car lot, and does
all the work in connection with said lot himself. That
there is not now, nor has there been any labor dispute in
connection with the operation of said used car lot, or any
dispute regarding the wages, hours, or conditions of em-
ployment of any employee, and that in fact Plaintiff has
no employees in connection with the operation of said lot,
and particularly no member of the Defendant union is
employed by Plaintiff.

III.

That commencing on or about the 30th day of August,
1947, Defendants have caused Plaintiff's business at the

[fol. 2] location above stated to be picketed. That the purpose of said picketing is to ~~coerce~~ Plaintiff into refraining from operating said business on Saturday during each week, to coerce the Plaintiff into either joining the Defendant union or operating his business as a union shop employing union employees in connection with the sale of used automobiles on Plaintiff's premises, and to ruin Plaintiff's business unless Plaintiff refrains from operating his said business on Saturdays, employs union employees to ~~engage in the sale of automobiles~~, or in the alternative joins the Defendant union; and the Defendants deliberately, maliciously, and by implied threats and intimidations have prevented and are now preventing Plaintiff's customers from entering Plaintiff's place of business, and are thus damaging and will destroy Plaintiff's business unless restrained.

IV.

That as a result of said picketing, Plaintiff is now suffering irreparable damage and injury to his business, in loss of profits, which damages are difficult to prove and Plaintiff has no plain, speedy or adequate remedy at law.

V.

That an emergency exists, and unless restrained, the Defendant union and its members and officers will continue to damage and unreasonably interfere with said business of Plaintiff by said picketing, and a Restraining Order should be issued immediately, preventing the Defendants from further picketing and interfering with or molesting the business or property of Plaintiff, or in any way injuring Plaintiff's said business.

VI.

That Plaintiff is entitled to an immediate, temporary and preliminary Injunction pending the hearing herein and the final disposition of the cause; and to a temporary or preliminary Injunction restraining the Defendant union, and its members and officers, and each of them, either [fol. 3] directly or indirectly, from in any manner molesting or interfering with the business of the Plaintiff, and that said temporary Injunction be granted and remain permanent upon the trial of this cause.

VII.

That the Plaintiff has been damaged in a large sum, the exact amount of which is at the present time undeterminable; that this damage will continue to increase unless Defendants are restrained.

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

1. For the immediate issuance, without notice, of a Temporary Restraining Order herein, preventing the Defendants, either directly or indirectly, from in any way interfering with, molesting, or damaging the business of the Plaintiff by picketing or otherwise, pending Plaintiff's application for a Temporary Restraining Order.

2. For a Temporary Restraining Order herein preventing the Defendants, either directly or indirectly, from in any way interfering with, molesting, or damaging the business of Plaintiff by picketing or otherwise, pending the trial of the above entitled cause.

3. That a permanent Injunction be granted herein restraining the Defendants from in any way interfering with, molesting, or damaging the business of the Plaintiff by picketing or otherwise.

4. That Plaintiff recover from Defendants his damages in such amount as may be determined to be proper.

5. That the Plaintiff recover his costs and disbursements herein.

6. That Plaintiff have and recover such other and further relief as may be proper in the premises.

McCUNE & YOTHERS

Attorneys for Plaintiff

[fols. 4-8] *Duly sworn to by George E. Cline. Jurat omitted in printing.*

[File endorsement omitted.]

[fol. 9] IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KING COUNTY

[Title omitted]

FINDINGS OF FACT AND CONCLUSIONS OF LAW—Filed May
25, 1948

THE ABOVE ENTITLED CAUSE having come regularly on for hearing on the 19th day of May, 1948 before the Honorable Chester A. Batchelor, one of the Judges of the above entitled Court, in response to an Order to Show Cause which was entered herein on the 13th day of May, 1948, and upon the oral motion of Defendants to dismiss said Order to Show Cause; the Plaintiff appearing in person and by McCUNE & YOTHERS, his attorneys; the Defendants appearing by BASSETT & GEISNESS, their attorneys; and the Court having heard and considered the files and records herein, and the testimony introduced by the parties, and having heard and considered the arguments of counsel, and on the 25th day of May, 1948 having entered its written memorandum opinion, and being now fully advised in the premises, makes the following:

Findings of Fact

I.

That during all of the times herein mentioned the Plaintiff was and still is engaged in the business of selling used automobiles, Plaintiff's place of business being located at 3126 Eastlake Avenue, Seattle, Washington.

II.

That AUTOMOBILE DRIVERS AND DEMONSTRATORS LOCAL UNION No. 882 is a voluntary association organized as a labor union, chartered by the International Brotherhood [fol. 10] of Teamsters, Chauffeurs, Warehousemen and Helpers of America, affiliated with the American Federation of Labor, and embraces among its membership persons employed and engaged in the business of selling used automobiles in the Seattle area. That the Defendants Ralph

Reinertsen, and J. J. Rohan are respectively its Business Agent and Secretary.

III.

That during the spring of 1946 Plaintiff was approached by a representative of the Defendant union, and advised that unless Plaintiff joined said union Plaintiff's place of business would be picketed by said union; that Plaintiff was thereby induced to join said union and remained a member thereof until some time in October, 1947, at which time Plaintiff was dropped from membership by reason of non-payment of dues.

IV.

That in the spring of 1946 Plaintiff became a member of the Independent Automobile Dealers Association of Seattle, paying his initiation fee therein and one year's dues; that thereafter Plaintiff attended *some but* no meetings of said Association *after June 12, 1946*; that Plaintiff paid no further dues to said Association and was not a member thereof on the 14th day of April, 1948, on which date a contract was entered into between the Independent Automobile Dealers Association, Inc. and the Defendant union.

V.

That on or about the 12th day of June, 1946, the Defendant union entered into a collective bargaining agreement with the Independent Automobile Dealers Association of Seattle, the first clause of which reads as follows:

"1. That all show rooms and used car lots will close not later than 6:00 p. m. on all week days and shall be closed on Saturdays and Sundays and the following holidays: New Year's Day, Washington's Birthday, [fol. 11] Memorial Day, Fourth of July, Labor Day, Armistice Day, Thanksgiving Day and Christmas Day or days observed as such holidays. Each dealer agrees to place in a prominent place on his used car lot or building, a conspicuous sign reading 'Closed Saturdays, Sundays and Holidays.' These provisions relating to closing shall not apply during the general automobile show or used car show sponsored by the Association. Saturday or Sunday work will be permissible on such Saturdays and Sundays as are mu-

tually agreed upon between the Association and the Union:"

That said agreement remained in effect until the 14th day of April, 1948, at which time a new contract was entered into between said union and said Association.

VI.

That on the 30th day of August, 1947, Plaintiff advised the Defendant union, through its Secretary, J. J. Rohan, that Plaintiff intended to open his place of business on Saturdays. That Defendants objected to Plaintiff so doing on the ground that Plaintiff was a member of the Independent Automobile Dealers Association and therefore bound by said contractual provision heretofore set forth, and that Plaintiff was furthermore a member of the Defendant union. That Plaintiff advised the said J. J. Rohan that he was no longer a member of the Independent Automobile Dealers Association of Seattle, and did not consider himself bound by said contract. That Plaintiff further advised the said J. J. Rohan that he no longer intended to remain a member of the Defendant union. That thereafter Plaintiff opened his place of business on Saturdays and has continued to do so at all times since. That Plaintiff's place of business was thereupon picketed by the Defendant union, and that said picketing has continued until the date of hearing herein.

VII.

That Plaintiff has at no time had in his employ any member of the Defendant union; that although at the time said picketing commenced Plaintiff did have two employees, said employees were not members of the Defendant union, [fol. 12] their duties did not include the sale of automobiles and there was no dispute between Plaintiff and said employees. That upon the establishment of said picket line, said employees ceased to work for Plaintiff and that Plaintiff has had no employees in connection with said business from the date on which said picketing commenced to the date of hearing herein.

VIII.

That the defendant union in accordance with its new contract with the Dealers Association is demanding that as a condition to the removal of said pickets, Plaintiff refrain from opening his place of business after 1:00 o'clock on Saturdays, and that Plaintiff further employ a member of the Defendant union, said employee to be compensated by being paid Seven (7%) per cent of all sales made at Plaintiff's place of business, irrespective of whether or not any sale might be made by Plaintiff.

IX.

That said picketing was normally carried on by two pickets. That said pickets carried the familiar "sandwich sign" stating that Plaintiff's place of business was unfair to defendant "Union". That said pickets talked to persons entering Plaintiff's place of business and took down the motor vehicle license numbers on automobiles of Plaintiff's patrons. That when inquiry was made by any given patron as to the reason for taking down the license number of his motor vehicle, the pickets would reply, "You'll find out". That said pickets interfered with the use of one of Plaintiff's driveways, which driveway Plaintiff closed in order to avoid any possibility of one of said pickets being run over. That as a result of said picketing Plaintiff's business fell off, and drivers for supply houses refused to deliver parts and other materials to the Plaintiff, and Plaintiff was required in order to get materials, to go to the dealers in his own vehicle and secure such materials as were needed in the carrying on of his business. That said picketing was entirely peaceful, the pickets neither using force nor threatening physical violence nor molesting anyone either seeking to enter or leave Plaintiff's place of business.

[fol. 13] From the foregoing Findings of Fact, the Court makes the following:

Conclusions of Law

I.

That the Court has jurisdiction of the parties to and subject matter of this action.

II.

That no labor dispute exists within the meaning of the laws of the State of Washington, and said picketing is, therefore, unlawful, and the Plaintiff is entitled to an injunction, pendente lite, restraining and enjoining the same, and, accordingly, the Defendants' motion to dismiss the Plaintiff's application for such injunction should be denied.

III.

That said picketing was coercive, and, therefore, an injunction forbidding the same would not infringe the Defendants' right of freedom of speech guaranteed by the First and Fourteenth Amendments to the Constitution of the United States.

DONE IN OPEN COURT this 25 day of May, 1948.

CHESTER A. BATCHELOR

Judge

Presented by:

C. M. McCUNE

Of Counsel for Plaintiff

Copy received this 25 day of May, 1948.

BASSETT & GEISNESS

Of Attorneys for Defendants

[File endorsement omitted.]

[fol. 14] IN THE SUPERIOR COURT OF THE STATE OF
WASHINGTON IN AND FOR KING COUNTY

[Title omitted]

TEMPORARY INJUNCTION—Filed May 25, 1948

THE ABOVE ENTITLED CAUSE having come regularly on for hearing on the 19th day of May, 1948, before the Honorable Chester A. Batchelor, one of the Judges of the above entitled Court, in response to an Order to Show Cause, which was entered herein on the 13th day of May, 1948,

and upon the Defendants' motion to dismiss Plaintiff's application for a Temporary Restraining Order; the Plaintiff appearing in person and by McCune & Yothers, his attorneys of record, the Defendants appearing by their attorneys, Bassett & Geisness; and the Court having heard and considered the files and records herein, and the testimony introduced by the parties, having heard and considered the arguments of counsel, and on the 21st day of May, 1948, having entered its written memorandum opinion, and having made Findings of Fact and Conclusions of Law, and being fully advised in the premises, it is therefore,

ORDERED, ADJUDGED AND DECREED that the Defendants' motion to dismiss Plaintiff's application for a temporary Restraining Order shall be and the same is hereby denied.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Defendants and each of them be and they are hereby restrained pendente lite from in any manner picketing the Plaintiff's place of business.

IT IS FURTHER ORDERED that before said Temporary In-[fol. 15-16] junction shall become effective, the Plaintiff shall execute a proper bond to the Defendants in the sum of FIFTEEN HUNDRED (\$1500.00) DOLLARS.

DONE IN OPEN COURT this 25 day of May, 1948.

CHESTER A. BATCHELOR

Judge

Presented by:

C. M. McCune

Of Counsel for Plaintiff

Copy received this 25 day of May, 1948.

BASSETT & GEISNESS

Of Attorneys for Defendants

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P-CIV

[File endorsement omitted.]

[fol. 17].

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR
KING COUNTY

[Title omitted]

ANSWER—Filed June 29, 1948

Answering the plaintiff's complaint herein the defendants admit, deny and allege as follows:

I.

Answering paragraph II they admit that the plaintiff does not employ any salesmen in connection with the operation of his used car lot and employs no member of the defendant Union, but deny each and every other allegation therein contained.

II.

Answering paragraph III the defendants admit that on or about August 30, 1947, the defendant Union commenced picketing the plaintiff's place of business, but deny each and every other allegation therein contained.

III.

They deny each and every allegation of paragraphs IV, V, VI and VII.

Further answering and as an AFFIRMATIVE DEFENSE the defendants allege:

I.

That defendant Automobile Drivers and Demonstrators Local Union No. 882 is a voluntary association organized as a labor Union, chartered by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, embracing in its membership automobile salesmen in the Seattle area. That in March, 1945, the plaintiff became a member of the defendant Union and continued his membership therein until October, 1947, at which time he was dropped from membership for non-payment of dues.

II.

That in the spring of 1946 the plaintiff became a member of the Independent Automobile Dealers Association

of Seattle, an organization composed of used car dealers doing business in the Seattle area, which organization was the collective bargaining agency of the members thereof and negotiated with labor unions, particularly with the defendant Union, labor contracts concerning the wages of automobile salesmen, working conditions and hours of employment, and that during all of the times mentioned in the plaintiff's complaint he was a member of said Independent Automobile Dealers Association.

III.

That on or about the 12th day of June, 1946, said Independent Automobile Dealers Association entered into a collective bargaining agreement in writing on behalf of its members, including the plaintiff, with the defendant Union; said contract provided, among other things:

"1. That ~~all~~ show rooms and used car lots will close not later than 6:00 p. m. on all week days and shall be closed on Saturdays and Sundays and the following holidays: New Year's Day, Washington's Birthday, Memorial Day, Fourth of July, Labor Day, Armistice Day, Thanksgiving Day and Christmas Day or days observed as such holidays. Each dealer agrees to place on his used car lot or building, a conspicuous sign reading 'Closed Saturdays, Sundays and Holidays.' These provisions relating to closing shall not apply during the general automobile show or used car show sponsored by the Association. Saturday or Sunday work will be permissible on such Saturdays and Sundays as are mutually agreed upon between the Association and the Union."

That on the 30th day of August, 1947, while said contract was in full force and effect, the plaintiff breached the same [fol. 19] in that he removed from his used car lot the sign which he had previously posted there reading "Closed Saturdays, Sundays and Holidays" and posted in lieu thereof a sign reading "Open Saturdays", and has ever since kept his place of business open for the sale of used cars on Saturdays and that by reason thereof there has ever since been a labor dispute between the plaintiff and defendant Union.

IV.

That thereafter on or about the 31st day of August, 1947, the defendant Union began picketing the plaintiff's place of business, which picketing was normally carried on by one or two pickets who wore the familiar sandwich sign stating that the plaintiff's place of business was unfair to the defendant Union; that said picketing was at all times entirely peaceful, the pickets neither using force nor threatening physical violence nor molesting anyone either seeking to enter or leave the plaintiff's place of business; and that said picketing continued until enjoined by the court on or about the 25th day of May, 1948.

V.

That in conducting the aforesaid picketing the defendants were merely exercising their right of freedom of speech guaranteed by the First and Fourteenth Amendments to the Constitution of the United States.

WHEREFORE, having fully answered, the defendants pray that the plaintiff's complaint be dismissed and that they have judgment for their costs and disbursements of this action.

BASSETT & GEISNESS
Attorneys for Defendants

[fol. 19a] *Duly sworn to by Samuel B. Bassett. Jurat omitted in printing.*

Copy received
McCUNE & YOTHERS
June 25, 1948

[File endorsement omitted.]

[fol. 20] IN THE SUPERIOR COURT OF THE STATE OF
WASHINGTON FOR KING COUNTY

[Title omitted]

REPLY--Filed June 29, 1948

Comes now the Plaintiff and replying to the affirmative defense set forth in the Answer of Defendants, admits, denies and alleges as follows:

I

Replying to paragraph I. of Defendants' affirmative defense, Plaintiff alleges that he ceased to be a member of the Defendants' Union in August, 1947, at which time Defendant Labor Union was notified by Plaintiff that Plaintiff no longer considered himself a member of the Union. Further replying to said paragraph Plaintiff alleges that he was induced to join the Defendant Union in March, 1945, by reason of threats made by the Defendants, that Plaintiff's place of business would be picketed unless he joined said Union and that Plaintiff would be put out of business.

II

Replying to paragraph II. of Defendants' affirmative defense, Plaintiff admits that in the spring of 1946 Plaintiff became a member of the Independent Automobile Dealers Association of Seattle. Plaintiff denies that he was a member of said association at the time Plaintiff's place of business was first picketed by the Defendant Union. Further replying to said paragraph Plaintiff alleges that the Defendants were informed and advised by Plaintiff [fol. 21] prior to the commencement of the picketing of Plaintiff's place of business, that Plaintiff was not a member of the Independent Automobile Dealers Association.

III

Replying to paragraph III. of Defendants' affirmative defense, Plaintiff admits that on or about the 12th day of June, 1946 the Independent Automobile Dealers Associa-

tion entered into a collective bargaining agreement with the Defendant Union, which agreement contains a clause similar to that set forth in said paragraph. Plaintiff admits that on the 30th day of August, 1947, Plaintiff posted a sign on Plaintiff's premises reading, "Open Saturdays", and that ever since has kept his place of business open for the sale of used cars on Saturdays. Plaintiff denies that said contract was on said date in full force and effect with respect to Plaintiff, and further denies that there has been or now is a labor dispute between the Plaintiff and the Defendant Union. Further replying to said paragraph, Plaintiff affirmatively alleges that on or about the 14th day of April, 1948, the collective bargaining agreement between the Independent Automobile Dealers Association and the Defendant Union entered into on the 12th day of June, 1946, was terminated and that a new agreement was then entered into. That on said date Plaintiff was not a member of the Independent Automobile Dealers Association and is not a party to said contract. That said contract was entered into prior to the commencement of the above entitled action.

IV

Replying to paragraph IV. of Defendants' affirmative defense, Plaintiff admits that the Defendant Union began picketing the Plaintiff's place of business on or about the 31st day of August, 1947 and continued said picketing until enjoined by the Court. Plaintiff admits that the pickets [fol. 22] wore the familiar sandwich sign stating that Plaintiff's place of business was unfair to the Defendant Union. Plaintiff denies that said picketing was at all times entirely peaceful and that only one or two pickets were normally employed by the Defendant Union and that pickets neither used force nor threatened physical violence, nor molested anyone either seeking to enter or leave the Plaintiff's place of business. Plaintiff affirmatively alleges that said pickets by obstructing the drive-ways to Plaintiff's place of business, taking down license number of automobiles stopping at Plaintiff's place of business and employing coercive language toward the drivers of said automobiles, effectively prevented Plaintiff's customers and suppliers from dealing with Plaintiff and from entering upon Plaintiff's place of business.

V

Replying to paragraph V. of Defendants' affirmative defense, Plaintiff denies the same.

WHEREFORE, having fully replied to the Defendants' affirmative defenses, Plaintiff prays that he have judgment as prayed for in his Complaint on file herein, together with his costs and disbursements herein incurred.

McCUNE & YOTHERS
Attorneys for Plaintiff

Duly sworn to by George E. Cline. Jurat omitted in printing.

Copy received 6/29/48

SAMUEL B. BASSETT
Attorney for Defendants.

[File endorsement omitted.]

[fol. 23]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR
KING COUNTY

DECREE—Filed June 29, 1948

[Title omitted]

The above entitled cause having come on regularly for trial on the merits on the 25th day of June, 1948, before the Honorable Chester A. Batchelor, one of the Judges of the above entitled Court; the plaintiff appearing by C. M. McCune, his attorney, and the defendants appearing by Samuel B. Bassett, their attorney; and the parties, through their counsel, having stipulated in open court that the cause be submitted to the court for final judgment on the merits on the evidence heretofore taken on plaintiff's application for a temporary injunction and the arguments submitted, and the plaintiff having further stipulated to waive his claim for damages arising out of the picketing complained of; and the court having reconsidered the evidence introduced by the parties on plaintiff's application for a tem-

porary injunction, and having reconsidered and reaffirmed the memorandum opinion filed herein on the 25th day of May, 1948, following the hearing on the application for temporary injunction, and the findings of fact and conclusions of law made and entered on said date, pursuant to [fols. 24-26] said memorandum opinion, and being now fully advised in the premises, it is, therefore,

ORDERED, ADJUDGED AND DECREED that the defendants, and each of them, be and they are hereby permanently restrained and enjoined from in any manner picketing the plaintiff's place of business.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the surety on the bond for injunction posted by the plaintiff upon the entry of the temporary injunction herein be exonerated from all liability, and the plaintiff is awarded judgment for the costs and disbursements of this action.

DONE IN OPEN COURT this 29th day of June, 1948.

CHESTER A. BATCHELOR

Judge

Approved as to form:

SAMUEL B. BASSETT

Attorney for Defendants

Presented by:

C. M. McCUNE

Attorney for Plaintiff

[File endorsement omitted.]

[fol. 27] IN THE SUPREME COURT OF THE STATE OF
WASHINGTON

No. 30737 En Banc

GEORGE E. CLINE, Respondent,

v.

AUTOMOBILE DRIVERS AND DEMONSTRATORS LOCAL UNION No.
882, RALPH REINERTSEN, its Business Agent, and J. J.
ROHAN, its Secretary, Appellants.

OPINION—Filed June 3d, 1949

This action was instituted by George E. Cline against Automobile Drivers and Demonstrators Local Union No. 882, Ralph Reinertsen, its business agent, and J. J. Rohan, its secretary, to enjoin the defendants from in any way interfering with, molesting or damaging the business of plaintiff by picketing or otherwise, and to recover damages alleged to have been sustained as the result of the picketing of plaintiff's place of business by defendants.

Upon the filing of the complaint and the affidavit of plaintiff, the superior court of the state of Washington for King county, on May 13, 1948, issued a show cause order directed to the above named defendants, requiring them to appear on May 19, 1948, and show cause, if any they had, why a temporary restraining order should not issue pending the trial of the cause, restraining and preventing defendants from picketing plaintiff's place of business.

The cause came on to be heard on May 19, 1948, on the show cause order above referred to and upon the oral motion of defendants to dismiss the order to show cause, and the court, having considered the files and records [fol. 28] herein, the testimony introduced by the parties and the argument of counsel, and having on May 25, 1948, made and entered a written memorandum opinion, on the same day made and entered findings of fact, conclusions of law and a temporary injunction. By the temporary injunction, defendants' motion to dismiss plaintiff's application for a temporary restraining order was denied, and

defendants were restrained *pendente lite* from in any manner picketing plaintiff's place of business.

Defendants thereafter filed an answer to the complaint, wherein they admitted and denied certain allegations therein contained, and made certain affirmative allegations, the concluding paragraph being

"That in conducting the aforesaid picketing the defendants were merely exercising their right of freedom of speech guaranteed by the First and Fourteenth Amendments to the Constitution of the United States."

The matter came on for trial on the merits on June 25, 1948, at which time counsel for the respective parties stipulated in open court that the case would be submitted for final judgment on the merits on the evidence theretofore introduced on plaintiff's application for a temporary restraining order, and it appearing from the decree entered that plaintiff further stipulated to waive his claim for damages, the court, having reconsidered the evidence introduced, and having reconsidered and reaffirmed the written memorandum opinion filed on May 25, 1948, and the findings of fact and conclusions of law made and entered on the same date, on June 29, 1948, made and entered its decree permanently restraining and enjoining defendants and each of them from in any manner picketing plaintiff's place of business. Defendants gave timely notice of appeal to this court from the judgment last above referred to.

[fol. 29] Appellants' assignments of error are that the trial court erred (1) in holding that the evidence does not establish a labor dispute, under the laws of this state; (2) in refusing to hold that appellants' right to picket respondent's place of business is authorized and protected by the first and fourteenth amendments to the constitution of the United States; (3) in permanently enjoining the peaceful picketing of respondent's place of business.

Before discussing our views of the facts and the law applicable thereto in this case, we desire to quote in full the written memorandum decision filed by Honorable Chester A. Batchelor, on May 23, 1948, as such memorandum decision expresses so fully and completely the trial court's theory of this case, and its reasons for the conclusions reached and the judgment entered.

"Being of the opinion that my oral decision on May 21st was perhaps prolix and covered discussion or argument concerning questions and matters which have become moot by reasons of the decision of the supreme court in the case of *Gazzam v. Building Service Employees*, 129 Wash. Dec. 455 [29 Wn. (2d) 488], I have decided, upon my own motion, to withdraw said oral decision and substitute therefor this written memorandum decision. It will be signed and entered prior to the signing and entry of findings of fact and order, and will supersede and take the place of said oral decision.

"The fundamental facts in this case, in my opinion, are, in ultimate effect, substantially identical with those in the case of *Hanke v. International Brotherhood of Teamsters etc. Union*, No. 392989 of this court. While it is contended in an able argument by counsel for the defendant that a distinction exists between the *Hanke* case and the case at bar, by reason of the former or past relationship between the parties to this action, I believe that the correct applicable test herein is the relationship between the parties at this time.

"The supreme court in the *Gazzam* case, *supra*, held that such picketing as involved herein should be enjoined, the court on page 467 [29 Wn. (2d) p. 500] saying:

"We hold that the acts of respondents, in so far as the picketing was concerned, were coercive—first, because they violated the provisions of Rem. Rev. Stat. (Sup.), 7612-2, and, second, because they were in violation of the rules of common law as announced in the cases just approved." (Italics mine.)

"My decision relative to picketing in the case of *Swenson v. Seattle Central Labor Council*, 27 Wn. (2d) 193, was reversed by the supreme court, and the supreme court in the subsequent *Gazzam* case expressly approved its previous decision in the *Swenson* case.

[fol. 30] "I concur in the able opinion of Judge McDonald in the *Hanke* case, *supra*; that the decisions of the supreme court in the *Swenson* and *Gazzam* cases are controlling in both the *Hanke* case and the case at bar. (See also *Walker v. Gilman*, 25 Wn. (2d) 557.)

"While I find that the picketing here in question was free from violence, threats of violence or interference with any employees of the plaintiff, such picketing, under the

Swenson and *Gazzam* cases, *supra*, is coercive and subject to injunction.

"Findings, conclusions and order granting to the plaintiff a temporary injunction against picketing *pendente lite*, upon the filing by the plaintiff of an approved bond in the sum of \$1500.00, may be prepared, served and presented for signature and entry."

Respondent, George Cline, had been engaged in the business of selling used automobiles at 3126 Eastlake avenue, Seattle, for about four and one-half years prior to May 19, 1948, the date of the hearing at which the testimony hereinafter referred to was introduced. He had never employed a salesman, but had done all the selling himself.

Automobile Drivers and Demonstrators Local Union No. 882 is a voluntary association, organized as a labor union and chartered by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and it embraced among its membership persons employed and engaged in the business of selling used automobiles in the Seattle area. Defendants Ralph Reinertsen and J. J. Rohan, at all times herein mentioned, were, respectively, its business agent and secretary.

Sometime in 1945, respondent, as testified to by him, joined appellant union, under the following circumstances:

"Well, in 1945, after being threatened several times with a picket line and being promised that I would be driven out of business and if necessary out of town, I joined the union on a day when Mr. Rohan came to my place of business and says, 'We have a picket line down the street at Coast-In Service, it's been there a few weeks and has driven them out of business to the point where they are glad to sell out and leave.' He says, 'If you don't sign up with us now we'll have this picket line in front of your place of business next.' At that time I consulted some of the dealers I was acquainted with in the district and they informed me that if I wanted to do business in Seattle I had better sign up with the union. Q. And you joined the defendant union at that time? A. Yes. Q. Are you at the present time a member of the defendant union? A. No, I'm not."

[fol. 31] Mr. Reinertsen testified that respondent had been dropped from the union sometime in October, 1947, and was not a member of appellant's organization at the time of this hearing.

It may be stated here that Mr. Rohan, with whom respondent claimed to have had the conversation above quoted, and who was the secretary of appellant union, was not called as a witness in this case.

In the spring of 1946, respondent became a member of Independent Automobile Dealers Association of Seattle (hereinafter referred to as the Association), paying his initiation fee therein and one year's dues, from April, 1946, to April, 1947. He paid no further dues to the Association, and was not a member thereof on April 14, 1948, on which date a contract was entered into between the Association and appellant union.

On or about June 12, 1946, appellant union entered into a collective bargaining agreement with the Association, the first clause of which reads as follows:

"That all show rooms and used car lots will close not later than 6:00 p. m. on all week days and shall be closed on Saturdays and Sundays and the following holidays: New Year's Day, Washington's Birthday, Memorial Day, Fourth of July, Labor Day, Armistice Day, Thanksgiving Day and Christmas Day or days observed as such holidays. Each dealer agrees to place in a prominent place on his used car lot or building, a conspicuous sign reading 'Closed Saturdays, Sundays and Holidays.' These provisions relating to closing shall not apply during the general automobile show or used car show sponsored by the Association. Saturday and Sunday work will be permissible on such Saturdays and Sundays as are mutually agreed upon between the Association and the Union."

This agreement remained in effect until April 14, 1948; at which time a new contract was entered into between the union and the Association, copy of which was introduced in evidence as defendant's exhibit 4. This was the contract in effect at the time of trial.

On the Friday preceding Labor Day of 1947, respondent called appellant union and requested a withdrawl card, [fol. 32] informing Mr. Rohan that he was quitting the union and was going to hang up a sign with the two words on it "Open Saturdays," and he did hang up such a sign. At that time appellant union objected to his quitting the union and opening Saturdays, on the ground that he was a member of the Association and therefore bound by the contract of June, 1946. Appellant further contended that

respondent was still a member of appellant union. Thereafter respondent opened his place of business on Saturdays, and continued to do so at all times, and his place of business was picketed from the Saturday preceding Labor Day in 1947, up until the date of the hearing herein, which occurred, as we have said, on May 19, 1948.

Respondent at no time has had in his employ any member of appellant union. While at the time the picketing commenced respondent did have two employees, they were not members of appellant union, their duties did not include the sale of automobiles, and there was no dispute of any kind between respondent and such employees. Upon the establishment of the picket line, these employees ceased to work for respondent, and respondent has had no employees in connection with his business from the date on which the picketing commenced to the date of the hearing.

Respondent's testimony as to the actions of the pickets is in part as follows:

"A. They parade up and down the sidewalk part of the time, and part of the time they set on the front of my cars. The part of the time that they parade up and down the sidewalk they manage to block driveways. I finally closed my main driveway so someone would not get run over there because they were forever stepping in front of an incoming or outgoing car. In addition to that, they've been taking down license numbers of people who stop there, and the method of procedure they use is fighting [frightening] a great many people away. They will get out there, one picket at each end of the automobile and holding up a big placard with a piece of paper on it and hold up a pencil and take down the number. When the owner of the car would ask what this is for they would reply, 'Well, you'll see,' and some customers have said, 'Well, do you think you can cause me trouble,' to which the pickets reply, 'You'll see,' and at this stage of the game most of the customers flee the scene. Q. What effect has this had upon your business? A. Well, the effect on the sale of automobiles has been that it has dropped off to practically nothing, and previous to the picket line I hired a mechanic to keep the automobiles in operating condition. Since the picket line the mechanic fears to work on the premises, so I have no method of keeping my automobiles in operating condition. . . . Q. What has been your ex-

perience in so far as securing the delivery of merchandise to the premises? Have you had any difficulty in that respect? A. No truck driver will deliver merchandise to the premises. . . . Q. After these truck-drivers have made a delivery and you have received it in front of your premises, have they made any deliveries after that? A. No, they ceased making deliveries after that."

Appellant union, in accordance with the new contract entered into with the Association in April, 1948, demanded of respondent, as a condition to the removal of the pickets, that respondent refrain from opening his place of business after one o'clock on Saturdays, and that respondent employ a member of appellant union, such employee to be compensated by being paid seven per cent of all sales made at respondent's place of business, irrespective of whether such sale was made by the employee or by respondent.

Picketing was normally carried on by two pickets, although at times there were as many as four in front of respondent's place of business. The pickets carried the familiar "sandwich sign," stating that respondent's place of business was unfair to appellant union. The picketing was peaceful, in that the pickets neither used force, nor threatened physical violence, nor actually molested any person seeking to enter or leave respondent's place of business.

The substance of the foregoing statement is contained in the court's findings of fact, and there is no question in our minds but that the court's findings are borne out by the great preponderance of the evidence. The trial court concluded as follows:

[fol. 34]. "That no labor dispute exists within the meaning of the laws of the state of Washington, and said picketing is, therefore, unlawful, and the plaintiff is entitled to an injunction, *pendente lite*, restraining and enjoining the same. . . .

"That said picketing was coercive, and, therefore, an injunction forbidding the same would not infringe the defendants' right of freedom of speech guaranteed by the first and fourteenth amendments to the constitution of the United States."

As we have hereinbefore stated, on stipulation of counsel that no additional testimony would be offered, the

court, at the time it entered the decree from which this appeal is taken, reaffirmed its findings and conclusions entered on May 25, 1948.

Appellants contend that a "labor dispute" was shown to exist in this case between respondent and appellant union; under the definition of that term as found in Rém. Rev. Stat. (Sup.), § 7612-13; that in picketing respondent's place of business appellant union was merely exercising its right of freedom of speech guaranteed by the first and fourteenth amendments to the constitution of the United States.

Appellants further contend that the facts in this case do not bring it within the principles announced in *Gazzam v. Building Service Employees International Union*, 29 Wn. (2d) 488, 188 P. (2d) 97.

We are of the opinion this case is controlled by the principles announced in the *Gazzam* case, *supra*. We are of the opinion that the testimony is undisputed that at the time this action was commenced, at which time respondent's place of business was being picketed by appellant union, respondent was not a member of appellant union, and had not been since the time appellant union had started to picket his place of business, namely, the Saturday before Labor Day of 1947; that respondent was not a member of the Association, and had not been since April, 1947, and was not a party to the contract entered into between appellant union and the Association in April of 1948; that respondent did not have in his employ at the time this [fol. 35] action was commenced, nor had he ever had in his employ, a member of appellant union.

We are firmly of the opinion that the picketing in this case was coercive, and, being coercive, is not protected by the statutes nor by the state or Federal constitutions.

We see no good purpose in again reviewing and analyzing the cases set out and discussed in the *Gazzam* case. We appreciate fully what has been said by the supreme court of the United States, and we have in this opinion considered the additional authority by that court cited by appellant, but we are still of the same view as expressed in the *Gazzam* case.

We may say further that we are entirely in accord with the majority opinion in the case of *Hanke v. International Brotherhood of Teamsters etc., Local No. 309*, — Wash.

Dec. —; and reference is here made to that case for a further discussion of our own cases, including the *Gazzam* case, and cases from the supreme court of the United States.

For the reasons herein assigned, the judgment of the trial court should be, and it is, hereby affirmed.

JEFFERS, C. J.

I concur in the result.

SCHWELLENBACH, J.

We concur:

STEINERT, J.

SIMPSON, J.

HILL, J.

GRADY, J.

We dissent.

MALLERY, J.

BEALS, J.

ROBINSON, J.

[fols. 36-44] IN THE SUPREME COURT OF THE STATE OF
WASHINGTON

No. 30737

King County No. 395781

GEORGE E. CLINE, Respondent,

vs.

AUTOMOBILE DRIVERS AND DEMONSTRATORS LOCAL UNION No.
882, RALPH REINERTSEN; its Business Agent, and J. J.
ROHAN, its Secretary, Appellants.

JUDGMENT—July 6, 1949

This cause having been heretofore submitted to the court, upon the transcript of the record of the Superior Court of King County, and upon the argument of counsel, and the Court having fully considered the same and being fully advised in the premises, it is now, on this 6th day of July, A. D. 1949, on motion of McCune and Yothers, of counsel for respondent, considered, adjudged and decreed, that the

judgment of the said Superior Court be, and the same is hereby affirmed with costs; and that the said George E. Cline have and recover of and from the said Automobile Drivers and Demonstrators Local Union No. 882, Ralph Reinertsen, its Business Agent, and J. J. Rohan, its Secretary, and from Continental Casualty Company, surety, the costs of this action taxed and allowed at Fifty-nine and 50/100 (\$59.50) Dollars, and that execution issue therefor. And it is further ordered, that this cause be remitted to the said Superior Court for further proceedings, in accordance herewith.

[fol. 45] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. a]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN
AND FOR KING COUNTY

No. 395781.

GEORGE E. CLINE, Plaintiff,

vs.

AUTOMOBILE DRIVERS AND DEMONSTRATORS LOCAL UNION No. 882; RALPH REINERTSEN, its Business Agent, and J. J. ROHAN, its Secretary, Defendants.

STATEMENT OF FACTS—Filed in Superior Court July 27, 1948—in Supreme Court Dec. 6, 1948.

[fol. 1]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN
AND FOR KING COUNTY

No. 395781.

GEORGE E. CLINE, Plaintiff,

vs.

AUTOMOBILE DRIVERS AND DEMONSTRATORS LOCAL UNION No. 882; RALPH REINERTSEN, its Business Agent, and J. J. ROHAN, its Secretary, Defendants.

BE IT REMEMBERED: That the above entitled and numbered cause was heard by the Honorable Chester A. Batchelor,

one of the Judges of the above entitled Court, sitting in Department No. 3 thereof, beginning Wednesday, May 19, 1948, at 10:00 o'clock A. M.

The Plaintiff was represented by Mr. Calmar M. McCune, of Messrs. McCune & Yothers, Attorneys at Law.

The Defendants were represented by Mr. Samuel B. Bassett, of Messrs. Bassett & Geisness, Attorneys at Law.

Witnesses were sworn and examined, documentary evidence was introduced, and the following proceedings herein were had, to-wit:

[fol. 2] The Court: Gentlemen, are you ready in the case of Cline versus Automobile Drivers Union?

Mr. McCune: Yes, Your Honor.

Mr. Bassett: Yes, Your Honor.

The Court: Proceed. It comes upon show cause, doesn't it?

Mr. Bassett: Yes, Your Honor.

The Court: All right. I have read the pleadings.

Mr. McCune: Is Your Honor familiar with the Gazzam case, on which this is based?

The Court: Oh, I think I am familiar with all the late decisions.

Mr. McCune: Very well. I don't think that the matter requires any discussion then, unless Counsel wishes to make an opening statement.

Mr. Bassett: Yes, Your Honor, I would like to make—

The Court: You haven't filed any controverting affidavit.

Mr. Bassett: No, Your Honor, I haven't. I just got back from the Supreme Court where I had two cases yesterday, and I felt that inasmuch as they are asking for a temporary injunction the oral evidence must be heard in any event, and so we are going to present our response.

Your Honor, in this case the situation is this: The plaintiff here is a used car leader. He operates, I believe he operates his business alone. He has no employees, and [fol. 3] that is what causes Counsel to refer to the Gazzam case. However, this plaintiff is bound by contract, has been bound by contract since 1946, a contract made and negotiated by the Independent Automobile Dealers Asso-

ciation with the defendant Union, concerning wages, hours, hours of business, opening and closing hours, holidays, and things of that kind.

The evidence will show that he became a member in 1946, and a contract was negotiated in 1946 on the 12th day of June which provided that all second-hand automobile dealers shall close on Saturdays. I am not too certain about what the evidence will show, as to whether or not he was a member when the contract was negotiated and signed or whether he became a member afterwards. In any event, when he became a member of the Automobile Dealers Association he became bound by this agreement. That would necessarily follow because he is in competition with all the other independent dealers and unless he was bound by their contract obviously they wouldn't want him in the Association. In other words, they wouldn't want him open on Saturdays while they were bound by contract to close on Saturdays.

In any event, the year preceding that Mr. Cline joined the defendant union, and he was a member of the Union at the time he joined the Independent Dealers Association. He became a member of the Union on March 12, 1945. He was initiated and took the obligation to abide by all the rules and regulations of the Union at that time, and he remained a member in good standing until October, 1947. He paid dues continuously from 1945 until June, 1947. In [fol. 4] August, 1947, he commenced opening his place of business on Saturdays, and when the Union representative went to him about it and told him that he was in violation of the contract he said that well, the Taft-Hartley law now had changed the situation and he wasn't bound by any Union regulations or anything else and he was going to run his business to suit himself, in substance. The result was that his place was picketed by the Union in August, 1947, and has been picketed continuously ever since, and he has continued to open on Saturdays and do business on Saturdays. He wasn't dropped as a member of the Union until October, '47, for non-payment of dues.

So we have here a member, Your Honor, who is a member of the Independent Dealers Association, who became a member in 1946, became bound by a contract that they had, and at the time he did that he was already a member of the defendant Union and he was obligated to abide by its

rules and regulations, and one of its rules and regulations, of course, pertains to this matter.

He continued to be a member of this Association, Your Honor, during all of this year and, so far as we know, he is still a member, at least he has never given this Independent Automobile Dealers Association official notice that he was withdrawing from it.

In March and April of this year, the Independent Dealers Association, having given notice to the Union that they wished to reopen this contract, negotiated a new agreement which also concerned the matter of Saturday opening. The plaintiff, Mr. Cline, attended the meetings of this Association, [fol. 5] at which time the amendment or modification of the old contract was discussed and voted upon, and he participated in those meetings and addressed the assembly. At that time he was in arrears in the payment of his dues to the Association, and he probably will contend that he was not a member. However, he has never withdrawn, he was never dropped, he wasn't suspended by the Association.

Now, it is our position that there is a real labor dispute with this man by reason of contract, aside from his membership in the Union, and we shall ask the Court later when the time comes to file an answer here, ask that he be required specifically to perform this contract.

I think that gives Your Honor some idea about our position here.

The Court: All right, gentlemen, you may produce any testimony.

Mr. McCune: Mr. Cline, will you take the witness stand.

The Court: Of course this is not a trial on the merits.

Mr. Bassett: That is right. It is an application for a temporary injunction.

The Court: I see from the file no restraining order has been issued.

Mr. Bassett: That is right.

[fol. 6] GEORGE CLINE, the Plaintiff, called as a witness in his own behalf, was examined and testified as follows:

Direct examination.

By Mr. McCune:

Q. Will you state your name?

A. My name is George Cline, C-l-i-n-e.

Q. What business are you engaged in, Mr. Cline?

A. The used car business.

Q. Where is that located?

A. 3126 Eastlake Avenue.

Q. How long have you been in that business?

A. About four and a half years.

Q. In connection with that business have you got any relationship with the defendant Union in this case?

A. Yes, I have.

Q. What is the relationship at the present time in so far as your business is concerned, your relationship with this Union?

A. At the present time we have a picket line which keeps out the greater portion of the prospective customers.

Q. How long has that picket line been in existence?

A. Since the Saturday preceding Labor Day.

Q. Of what year?

A. 1947.

Q. How many pickets are there normally in this picket line?

A. There are normally two.

Q. And how do they conduct themselves?

A. They parade up and down the sidewalk part of the time, and part of the time they set on the front of my cars. [fol. 7] The part of the time that they parade up and down the sidewalk they manage to block driveways. I finally closed my main driveway so someone would not get run over there because they were forever stepping in front of an incoming or outgoing car. In addition to that, they've been taking down license numbers of people who stop there, and the method of procedure they use is fighting a great many people away. They will get out there, one picket at each end of the automobile and holding up a big placard with a piece of paper on it and hold up a pencil and take down the number. When the owner of the car would ask

what this is for they would reply, "Well, you'll see," and some customers have said, "Well, do you think you can cause me trouble," to which the pickets reply, "You'll see," and at this stage of the game most of the customers flee the scene.

Q. What effect has this had upon your business?

A. Well, the effect on the sale of automobiles has been that it has dropped off to practically nothing, and previous to the picket line I hired a mechanic to keep the automobiles in operating condition. Since the picket line the mechanic fears to work on the premises, so I have no method of keeping my automobiles in operating condition.

Mr. Bassett: Well, I object to what he says about the mechanic fears as calling for a conclusion and hearsay.

The Court: I will hear it subject to your objection.

By Mr. McCune:

Q. Did the mechanic refuse to—

[fol. 8] The Court: I am unable to determine at this time whether it is a mere conclusion or not.

By Mr. McCune:

Q. —to work on your premises?

A. The mechanic did refuse to work on the premises.

Q. Was this mechanic a member of the defendant Union in this case?

A. No, he is not.

Q. What has been your experience in so far as securing the delivery of merchandise to the premises? Have you had any difficulty in that respect?

A. No truck driver will deliver merchandise to the premises. Some truck drivers who have delivered merchandise to the premises or who have stopped in front of my place of business so I could go out through the picket line myself and get the merchandise have found themselves in trouble with their labor union.

Mr. Bassett: Just a minute. I object to that as calling for a conclusion and hearsay.

The Court: The last part may be stricken.

By Mr. McCune:

Q. After these truck drivers have made a delivery and you have received it in front of your premises, have they made any deliveries after that?

A. No, they ceased making deliveries after that.

Q. Mr. Cline, when and under what circumstances did you, if ever, join the defendant Union in this case?

A. Well, in 1945, after being threatened several times with a picket line and being promised that I would be driven out of business and if necessary out of town, I joined the Union on a day when Mr. Rohan came to my place of business and says, "We have a picket line down the street at Coast-In Service, it's been there a few weeks and has [fol: 9] driven them out of business to the point where they are glad to sell out and leave." He says, "If you don't sign up with us now we'll have this picket line in front of your place of business next." At that time I consulted some of the dealers I was acquainted with in the district and they informed me that if I wanted to do business in Seattle I had better sign up with the Union.

Q. And you joined the defendant Union at that time?

A. Yes.

Q. Are you at the present time a member of the defendant Union?

A. No, I'm not.

Q. When did you cease to be a member of the defendant Union?

A. On the Friday preceding Labor Day of 1947 I phoned the labor union and talked to Mr. Reinertsen and requested a withdrawal card. I informed him that I was simply quitting the Union and would hang up a sign with the two words on it, "Open Saturday".

Q. Did you do that?

A. I did.

Q. Did the Union later drop you as a member?

A. I've had no communication with them. In the past I've received several letters from them. Every time I would be delinquent on my dues they would send me a letter and instruct me that if I did not pay my dues I would promptly be dropped from the rolls.

Q. That was prior to—

A. Yes.

Q. —this August date?

A. That's right.

[fol. 10] Q. Under what circumstances did you join the Independent Automobile Dealers Association?

A. The labor union which I had joined, at one of their meetings the majority of the members voted to negotiate with the dealers for Saturday closings. All the dealers who were members of the labor union were promptly informed that they must close their place of business Saturdays.

Mr. Bassett: Just a minute, I object to that as hearsay.
The Court: Objection sustained.

By Mr. McCune:

Q. Who informed you that you must close your place of business on Saturdays?

A. I was at the labor meeting where the dealers were all informed of that, and the following Saturday —

Q. Now, I just asked you who informed you.

A. Mr. Rohan.

Q. And what was his capacity at that time?

A. He was Secretary of the labor union.

Q. Of the defendant Union?

A. Yes.

The Court: Well, that may stand, then. He was present at the meeting.

By Mr. McCune:

Q. Then what followed?

A. I didn't close up the following Saturday. I had been working on my lot and Mr. Reinertsen came out and told them they had better leave the premises, that the place was supposed to be closed, and when they didn't leave he followed them around, waving his hands at them as if they were chickens, telling them they had better pack up and leave.

[fol. 11] Q. Who was Mr. Reinertsen?

A. Mr. Reinertsen is Business Agent for that defendant Union.

Q. Were these employees members of the defendant Union?

A. No, they were not.

Q. Were they salesmen?

A. No, they were not.

Q. And when did that take place?

A. That took place in April of 1947.

Q. And then what—

Mr. Bassett: Where was this? Where was this?

A. On my used car lot at 3126 Eastlake Avenue.

By Mr. McCune:

Q. Then what followed that, Mr. Cline?

A. I was talking to a number of the dealers around there and they interested me in going down to the Dealers Association and becoming a member of that, with the idea in mind that in strength there would be unity and that the Dealers Association with a greater number of members would be able to resist the desire of the labor union to force them to close Saturdays.

Q. And at that time you joined the dealers union, the Dealers Association?

A. That is right.

Q. Was that in 1946 or 1947?

A. Let's see, that was 1946, the spring of '46.

Q. So that when Mr. Rienertsen came out, when was that?

A. That was in the spring of '46.

Q. That was in the spring of '46?

A. Yes.

Q. Rather than the spring of '47 as you previously testified?

A. That is right, it was two years ago.

[fol. 12] Q. And what did you do to join the Independent Automobile Dealers Association?

A. I paid them the initiation fee and one year's dues.

Q. And that year's dues was to cover what year?

A. From April of 1946 to April of 1947.

Q. Did you pay any more dues?

A. No, I did not pay any more dues and ceased attending meetings altogether.

Q. For how long a period did you refrain from attending any meetings of the Association?

A. I attended no further meetings until the spring of 1948, when I was asked to come as a guest to meetings called, at which many automobile dealers were guests who

were not members of the Association, they were invited to attend for the purpose of hearing what the Association had to offer and to be asked to become members.

Q. Did you in any way make it known at those meetings or otherwise that you were not a member of the Association?

A. Yes, I did. Everybody I talked to I informed that I was not a member, and when they had discussion on the floor of everybody present, both Association members and non-members, I took part in the discussion and in addressing the group informed them that I was not a member of the Association.

Q. Did they ever solicit further payment of dues from you?

A. No, they did not. However, a number of them expressed a desire to see me join the Association again.

Q. Was the Association in any way authorized by you orally or in writing to negotiate a contract on your behalf with the defendant Union in the spring of 1948?

[fol. 13] A. No.

Q. What demands are made upon you, what demands have been made upon you by the defendant Union in this case as a condition to stopping the picketing of your premises?

A. They demand that I sign a contract similar to the one, or possibly identical to the one which the Used Car Dealers Association has signed, and that I hire salesmen to sell my cars instead of selling them myself.

Q. And what about Saturdays?

A. And the contract calls for closing at one o'clock Saturdays.

Q. Who made the demand that you do these things?

A. Mr. Reinertsen.

Q. When did the Union first contend that you were still a member of the Association?

A. At the time I informed them that I was quitting the labor union and opening Saturdays they says, "You can't do this, you belong to the Association." I replied that I had paid no dues or initiation fees or anything since 1946, had ceased attending their meetings and was therefore no longer a member.

Q. And who in the Union did you give that advice to?

A. Mr. Rohan.

Mr. McCune: You may examine, Counsel.

Cross-examination.

By Mr. Bassett:

Q. Have you done business in any other place besides Seattle, Mr. Cline?

A. No, I have not.

[fol. 14] Q. When did you commence your business here in Seattle?

A. I believe it was in 1944 that I first did business from a regular licensed premises.

Q. What do you mean by "licensed premises"?

A. Well, previous to that I sold about two or three cars a year. I would buy a car and drive it, and if somebody wanted to buy it I sold it, and some people might contend that that was doing business.

Q. Were you ever engaged in any other business?

A. I operated a service station for a couple of months.

Q. Your own business?

A. I leased it from an oil company.

Q. You have been engaged in this business now for four and a half years, you say?

A. Approximately that.

Q. Have you ever employed any salesmen?

A. Never.

Q. You always sold yourself?

A. That is right.

Q. About how many cars do you have on your lot, average, since 1947, since August? I mean cars for sale.

A. Oh, I own approximately fifty vehicles, of which about thirty are in salable condition.

Q. You employ no help of any kind?

A. I have employed no help of any kind since August of '47.

Q. You said you employed a mechanic.

A. I did up until the picket line come. I no longer have a mechanic.

Q. And who else did you employ before August, 1947, besides the mechanic?

[fol. 15] A. I had a man working part time as a general handyman, roustabout, around the lot, and—

Q. Doing what?

A. And early in 1946 in the latter part of '46 and the early part of '47 I employed a bookkeeper.

Q. What did this roustabout do, help you sell cars?

A. No, he did not.

Q. What did he do?

A. He run errands and washed cars and fixed flat tires and changed batteries, installed seat covers and welded broken bumpers, a multitude of odd jobs.

Q. He was sort of a mechanic too, wasn't he?

A. He had previously been an aircraft mechanic and now has one crippled hand.

Q. This mechanic, was he a member of the Machinists Union?

A. No, he was not.

Q. Not a union man at all?

A. No. He is a crippled man.

Q. What?

A. He is a crippled man, and he was learning to become a salesman.

Q. I am speaking of the mechanic now. You said you had a mechanic there.

A. The mechanic I employed was a member of Local 289 of the Automobile Machinists, an independent union.

Q. Yes, and you say he quit after the pickets were stationed in front of your place?

A. Yes.

Q. Have there always been two pickets stationed there?

A. No. Sometimes there's only one, sometimes there [fol. 16] have been three and sometimes four.

Q. Four pickets?

A. Yes.

Q. When was that?

A. I don't remember the exact date, but there was a short time when they had four pickets there, a matter of a few days, I believe.

Q. Did they all wear signs?

A. Yes, they all wore signs.

Q. All four of them?

A. I would say they do, they did.

Q. Well, did they?

A. Yes.

Q. Most of the time there is only one picket there, isn't that right?

A. No, most of the time there's two pickets.

Q. Are you talking about the last month or so, or are you talking about last August?

A. Ever since they have opened up, the major part of the time there's been two pickets.

Q. Do these pickets wear a sign?

A. Yes, they wear signs.

Q. Is the name of the Union on there?

A. Yes.

Q. What does the sign say, that you are unfair to organized labor?

A. The sign says, "This firm unfair to Local 882 of A. F. of L."

Q. How large a lot do you have there? Is it on Eastlake, Eastlake Avenue?

[fol. 17] A. That's right. It's about a hundred feet long and about, oh, about an average of, seventy feet wide, I'd say, or eighty feet wide. It's an odd shaped lot. It isn't square.

Q. You have a hundred foot frontage on Eastlake Avenue?

A. Yes, approximately that. I've never measured it.

Q. Yes, and you have two driveways, I take it?

A. I have one driveway now. I closed up the main driveway.

Q. You did that?

A. Yes.

Q. When did you close it?

A. I closed that up a few months ago. I am parking cars in it.

Q. You are parking cars in it?

A. Yes.

Q. You just have the one driveway now?

A. Yes.

Q. This is just a vacant lot, isn't it? Is there any building on it?

A. I have a small office building and a small repair shop.

Q. In the back?

A. In the middle of the lot, kind of.

Q. Now, you say that these pickets get in the way of automobiles?

A. They did as long as my main driveway was open. I could not drive in or out of the driveway myself, let alone

a customer coming in, without jabbing on my brakes to keep from running over a picket.

Q. You say the pickets deliberately stood in the way?

A. They deliberately walked in the way. If they had [fol. 18] just crossed the driveway and the motorist stopped and the driveway was clear he would be surprised by the picket wheeling around sharply and walking right back across the driveway.

Q. Did you ever ask the pickets to stay off the driveway?

A. No, I asked them what was the idea of making such a nuisance of themselves in the driveway at one time, and they says, "This is a public sidewalk, we can walk where we feel like."

Q. You said they sat on your cars?

A. Yes. They spend a good deal of time setting on—

Q. They went in your lot and sat on your cars?

A. Yes, that's right.

Q. Inside the lot?

A. Inside the lot.

Q. Isn't it a fact that they leaned on the car if the car projected out over the sidewalk?

A. No.

Q. Don't your cars project right out to the sidewalk?

A. No. Some of them come to the sidewalk, some of them are six inches, some of them are a foot from the sidewalk. They pick the one that looks the most comfortable to set on, whether it is six inches or a foot from the sidewalk.

Q. Did you ever ask them to get off of it? Have you ever requested a picket not to do that?

A. No. The only time I asked them to move is if I'm showing a car.

Q. Did you ever ask a picket when he was leaning against a car, sitting on it, to remove himself?

A. No, I did not.

[fol. 19] Q. You never did. How many times has that happened?

A. It happens almost daily.

Q. And you have never asked them not to do it?

A. No.

Q. Now, the pickets haven't sworn at anybody or threatened anybody with bodily harm, have they? Have you ever heard them threaten anybody with bodily harm?

Q. A month ago. What was the occasion, Mr. Cline?
[fol. 30] How did it come about?

A. I phoned up the Union hall and talked to Mr. Rohan.

Q. You phoned?

A. Yes.

Q. And what did you ask him?

A. I told him I was interested in getting rid of the picket line and if they wanted to talk to me that I would talk to them.

Q. And what did he say?

A. He said he would let me know.

Q. Did he?

A. No, he did not. However, Mr. Reinertsen called at my place of business the following day.

Q. And did you have some discussion with him about it?

A. Yes, I did.

Q. Did he give you the Union's terms?

A. Yes.

Q. And he asked you to either close—did he ask you to close your place at one o'clock on Saturdays?

A. Yes.

Q. Did you refuse to do that?

A. No.

Q. You agreed to do that, is that right?

A. I neither agreed nor refused.

The Court: You what?

A. I neither agreed nor refused.

By Mr. Bassett:

Q. He also asked you to employ someone to sell cars who would become a member of the Union?

A. He asked me to employ a man to sell cars who they would send me from the Union hall.

[fol. 31] Q. Was anything said about your becoming a member of the Union again?

A. I told him that it would be impossible for me to pay a salesman, and that if there was anything done in connection with it at all it would be if they reinstated me as a member of the Union without expense to me.

Q. Did he tell you whether you could or could not be reinstated?

A. He told me that I could never be reinstated again as far as he knew at that time.

Q. And that was because of what had occurred the previous August?

A. That is right.

Mr. Bassett: I have no further questions.

Redirect examination.

By Mr. McCune:

Q. Mr. Cline, did Mr. Reinertsen say anything at that time about this present contract, when he talked to you a month ago?

A. Yes, he did.

Q. What did he say?

A. He said that was the contract I would have to sign.

Q. He said that you would have to sign it?

A. Yes.

Q. Did he say anything about your being already bound by it?

A. When he came to my place of business he says, "Why, you're already a member of the Association," and I says, "I am not. I've paid no dues since 1946 and decline any attachments with them."

[fol. 32] Q. If you complied with the contract and with the request of the Union by hiring a Union salesman, what would be your situation if you were to sell cars yourself?

A. If I sold cars myself I would have to pay the commission to the salesman.

Mr. Bassett: I object to that.

Mr. McCune: I would like to have him—

By Mr. McCune:

Q. What was the answer?

A. If I sold cars myself I would have to pay the commission to the salesman just the same as if the salesman had sold it.

Q. You mentioned that your mechanic left when this picket line was set up. Did he leave because of any labor dispute with you, between yourself and the mechanic?

A. No.

Q. Did you have any dispute with his Union?

A. No.

Q. You testified that it was necessary for you to buy parts and go out and get them occasionally.

A. Yes.

Q. What happens to your lot in that situation? Are cars sold or does it just stand there?

A. It just stands there. I have to lock the door.

Q. Now, Mr. Cline, when did you start attending Union meetings in 1948?

Mr. Bassett: Union meetings or Association?

Mr. McCune: I mean—pardon me, Association meetings.

A. I believe it was March.

By Mr. McCune:

[fol. 33] Q. Had you attended any meetings prior to that of dealers or anyone?

A. I had attended a dealers meeting which the one who invited me to the meeting was very careful to specify that it was not an Association meeting but was a meeting of dealers.

Mr. Bassett: Just a minute. That is hearsay. I object to that.

By Mr. McCune:

Q. Well, that meeting was—

The Court: Perhaps the motive might go to his intent and good faith. Of course, it is not proof of any substantive matter.

Mr. McCune: No.

By Mr. McCune:

Q. Then what was the next meeting that you attended?

A. The next meeting I attended, I believe it was held in the Eagles Hall in Ballard by the Association for the purposes of inviting a lot of dealers down there to try and induce them to join the Association.

Q. Now, were you invited as a member of the Association or as a dealer who might reaffiliate with the Association?

A. I was invited as a guest who might reaffiliate.

Q. Were there other men there who did not belong to the Association?

A. Yes.

Q. How many would you say?

A. There were approximately sixty members present and about eighteen of them were Association members.

Q. There were in your opinion approximately forty-two who were not Association members out of sixty, is that right?

A. Yes.

[fol. 34] Q. And what was the next meeting that you attended?

A. The next meeting that I attended was in the Benjamin Franklin Hotel.

Q. And when was that?

A. Oh, I don't remember the date. It was—it followed a couple of weeks later, I guess, than the one at the Eagles Hall in Ballard.

Q. And what was that meeting called for?

A. So many of the dealers wouldn't join the Association because they did not want to be bound by that contract, so this meeting was called for the purpose of hearing the opinion of legal talent as to how the contract would affect them if they joined.

Q. And how many were present there?

A. As I recall, there were approximately sixty-five.

Q. And about how many of those would you say were non-members of the Association?

A. About thirty-five or forty.

Q. When was the next meeting that you attended?

A. The next meeting, as I recall, was at the Eagles club-room in Ballard.

Q. And what was that meeting, what was the purpose of that meeting?

A. As I recall, it was for some discussion on the contract. However, I came when the meeting was practically over. I came the last ten minutes of it, and the main business of the meeting had already been closed and they were taking up another minor topic.

Q. Were dealers other than Association members attending that meeting?

A. I can't say that I have.

Q. You haven't heard them swear at anybody either, have you? I mean going in and out of—

A. Yes, I have.

Q. At whom?

A. They have sworn at me, and also they've sworn at some of the customers.

Q. Well, who? Can you name one?

A. One of them definitely I could name. His name is Dunmire, Lowell Dunmire.

Q. And what was he doing at your place?

A. He came there to pay me some rent and the pickets started taking down his license number and thenceforth got into a quarrel with them.

Q. Oh, he quarreled with the picket?

A. They also quarreled with him.

Q. Yes. He didn't like the idea of having his license number taken down?

A. Not too well.

Q. I see. And that was what started that?

A. That was the beginning of it.

Q. Yes, that was the beginning of it. And you no doubt did nothing to incur the pickets swearing at you?

[fol. 20] No, I did not.

Q. You were perfectly orderly and minding your own business?

A. That is right.

Q. Who was the picket, do you know?

A. It was an elderly gentleman named Denny.

Q. And what was the occasion of that?

A. Well, I come walking along the sidewalk and he engaged me in conversation and—

Q. Did he know you?

A. Yes, he knew me.

Q. He knew you. A conversation about that?

A. Something about the operation of the business.

Q. Did you swear at him?

A. No, I did not.

Q. You didn't? What did you say to him?

A. I do not recall the exact words of the conversation.

Q. You don't recall why he swore at you?

A. He swore at me because I disagreed with some statement or other he made:

A. I also resigned as a member of the Automobile Dealers Association as of April 14th, prior to the signing of [fol. 40] this new contract.

Q. Did you attend meetings of the Automobile Dealers Association during the spring of 1948?

A. I did.

Q. Were those meetings attended by persons other than members of the Association?

A. I was invited. I didn't become a member of the Association until possibly five weeks before the '48 contract was signed on April 14th. I was invited as an independent dealer, being told that we were trying to get strength enough to test the legality of the Union contract which at that time we couldn't determine had a termination clause in it.

Q. And were those meetings attended by a large number or a small number of men who were not members of the Association?

A. Well, I'd say that most of them were attended by—the majority were not members.

Q. Was Mr. Cline at some of those meetings?

A. Yes, I saw Mr. Cline at practically all of them.

Q. Did you ever hear him make any statements at any of those meetings relative to his membership in the Association?

A. He told me and he told others in my presence that he—

Mr. Bassett: Just a minute. Told who?

A. He told me and others in my presence that he at one time belonged to the Association and belonged to the Union, but he had no intention of affiliating again.

By Mr. McCune:

Q. Was that during the course of one of the meetings which you attended?

[fol. 41] A. He stated that on at least one occasion at one meeting.

Q. Publicly?

A. Yes, in my presence and I'd say two other men who I could name.

Q. What was the statement?

A. I do not recall the statement.

Q. You do not recall the statement. Those are the only two occasions that you can recall where any swearing occurred?

A. Those are the only two occasions I definitely took note of.

Q. Yes. There has been no violence, no one was ever struck?

A. None other than violent words.

Q. I say physical violence.

A. No physical violence.

[fol. 21] Q. You have mentioned the violent words, haven't you?

A. I don't recall having previously mentioned that they were violent.

Q. Well, you said there was swearing or violent words?

A. That is a matter of opinion.

Q. Yes. Well, that is what you referred to when you said "violent words"?

A. The swearing was conducted in a violent tone, therefore violent words.

Q. Yes. What merchandise do you sell there besides used cars?

A. At present I sell no merchandise besides used cars.

Q. What merchandise do you use there?

A. Automobile parts.

Q. You repair automobiles there, do you?

A. I used to.

Q. Anything else?

A. That is all.

Q. No other merchandise?

A. No.

Q. When you speak of deliveries being stopped, you mean the deliveries of supplies or parts?

A. That is right.

Q. Nothing else?

A. Nothing else.

Q. Have you ever driven to buy parts yourself?

A. Yes.

Q. And hauled them yourself?

A. Hauled them myself.

Mr. Bassett: I object to Counsel's word "publicly". Now, he has told the truth about that.

The Court: Well, he has already answered the question.

Mr. McCune: Yes.

By Mr. McCune:

Q. Did you attend a meeting of the dealers at the Benjamin Franklin Hotel?

A. I did, on two occasions at least.

Q. When were those meetings held?

A. I would say between the middle of February and the 1st of April.

Q. And at that time was anything said at either of those meetings about the payment of dues to the Association?

A. Yes.

Q. What was said?

Mr. Bassett: Who said it?

A. Mr. Phil Cook. That was the president, I think, or acting president of the Association at that time. We decided we needed some strength and he asked for all those who would care to join the Association for the purpose of building up a fund to get attorneys to represent us to join, so he possibly got thirty or forty new members, and then I think at the meeting following—I think there was a meeting, however, in Ballard in between. At the meeting following he asked that all members or those who cared to—

[fol. 42] Mr. Bassett: Did you attend that, Mr. Miller?

A. I did.

A. (Continuing) —all members and all members who cared to remain in the Association to at that time pay their dues. I paid my dues.

By Mr. McCune:

Q. Was Mr. Cline present at that meeting?

A. Mr. Cline was present at that meeting and did not pay his dues.

Mr. McCune: That is all.

Q. Now, when you joined the Union, I understood you [fol. 22] to say you talked to some dealers.

A. That is right.

Q. About it, is that right?

A. That is right.

Q. And they told you that if you wanted to do business in Seattle you better join the Union?

A. That's right.

Q. Is that right?

A. That is right.

Q. And after that you did join the Union?

A. After a little pressure was applied by the officials of the Union.

The Court: After what?

A. A little pressure.

By Mr. Bassett:

Q. What do you mean by that?

The Court: What do you mean by "pressure"?

A. I mean when they repeatedly come to my place of business and threatened me with picket lines if I didn't join and promised me that these picket lines would drive me out of business.

By Mr. Bassett:

Q. Who did that?

A. Jim Rohan.

Q. That was in 1945, was it, Mr. Cline?

A. That was previous to my joining the Union. That must have been '45.

Q. These dealers you talked with were members, were they, of the Union?

A. Some of them were Union members, I believe.

Q. Mr. Cline, didn't you have a choice at that time of employing one Union salesman or joining the Union yourself?

[fol. 23] A. That is right.

Q. And you elected to join the Union rather than employ a salesman?

A. Inasmuch as I could not hire a salesman, couldn't pay him, I had to join the Union.

Q. Well, you could have hired a salesman but you preferred not to, didn't you?

A. I could have if I'd had the money to pay him.

Q. Yes. Well, salesmen are paid on a commission basis, are they not?

A. That is right.

Q. If they don't sell they are not paid, are they?

A. Yes, they have a guarantee.

Q. Now, this picketing of which you complain has been going on continuously since August, 1947?

A. Yes.

Q. And it started when you commenced opening your place of business on Saturdays?

A. That is right.

Q. You told the Union that you were going to do it, didn't you, that you had a sign all prepared?

A. That is right.

Q. And that you weren't going to pay any more dues to the Union?

A. That's right.

Q. When was it you say you joined the Dealers Association, the Independent Automobile Dealers Association?

A. In 1946, I believe it was April. Anyway it was the spring of the year.

Q. You were a member of the Union at that time in good standing, were you not?

[fol. 24] A. Yes, I was.

Q. And what was it that persuaded you to join the Association? Did anybody threaten you?

A. I was being threatened with a picket line if I didn't close Saturdays. I joined the Association because at the time the members of the Association thought they were going to be strong enough to prevent themselves from having to sign a contract with Saturday closing in it.

Q. In April of that year, Mr. Cline, you had been closing on Saturdays, hadn't you?

A. No, I had not been.

Q. You were a member of the Union, weren't you?

A. That's right.

Q. And the contract provided that the used car dealers should close on Saturdays, didn't it, the 1946 contract?

A. I joined at the time the contract was being negotiated.

Q. You did?

A. Yes. Prior to that time we were open Saturdays.

Q. You joined the Association in April, you say?

A. Approximately that time. I haven't the date before me.

Q. And do you recall the contract was signed in June?

A. I don't know exactly the date the contract was signed.

Q. At any rate it was being negotiated at that time, wasn't it?

A. That's right. In fact, I sat in the meetings when it was being negotiated.

Q. Yes. You are familiar with the contract, are you not, sir?

A. No.

Mr. Bassett: Mark this, please.

[fol. 25] (Copies of contracts between Automobile Drivers and Demonstrators Local Union No. 882 and Seattle Automobile Dealers Association, King County Dealers Association and Independent Used Car Dealers Association, dated June 20, 1946, was marked Defendants' Exhibit No. 1 for identification.)

By Mr. Bassett:

Q. Have you ever seen a copy of it?

A. I have seen that little red book, but I don't know if that is the contract.

Q. Have you seen this book, Defendants' Exhibit 1 for identification?

A. Yes.

Q. The Union had this printed and distributed to the dealers, did it not?

A. I believe that was the condition.

Q. And it says on here June 20, 1946, the date of it?

A. Yes. I believe if you will look it up you will find it became effective April even though they didn't finish negotiations until June.

Q. Well, anyway it is dated June the 20th, 1946, that is the one to which you refer?

A. That's right.

Mr. McCune: Counsel, I will not object on your assurance that this is an exact copy of the executed contract.

Mr. Bassett: I will have somebody else testify to that. I won't offer it at this time, I'll just withhold it.

By Mr. Bassett:

Q. After that contract became effective you conformed [fol. 26] to the terms of it and began closing your place on Saturdays, is that right?

A. That is right.

Q. And then later on that year, as I understood you, a good many of the dealers felt like they wanted to open on Saturdays and wanted to do something about modifying the contract?

A. That is right.

Q. And as a result a good many of you who were not members of the Association joined it for that purpose?

A. This contract you are referring to was joined after I became a member of the Association.

Q. Now, you just told me that it was being negotiated at the time you joined.

A. That is right.

Q. And it was signed after you joined?

A. Yes.

Q. Yes. Later on in the fall I understood you to say—

A. In the fall of '46 you are referring to?

Q. Yes. No, I'm mistaken about that. You have already said you became a member of the Association in April, is that right?

A. That's right, approximately April.

Q. 1946?

A. It was the spring of the year. I don't know if it was April or May.

Q. Yes. At that time they were negotiating this contract there was a great deal of talk about closing Saturdays?

A. That's right.

Q. And a lot of you joined for the purpose of avoiding closing Saturdays?

[fol. 27] A. That's right.

Q. At any rate, after this contract was signed, Mr. Cline, you began to conform with it and closed your place of business on Saturdays?

A. That's right.

Q. And you continued to conform to that contract until August, 1947?

A. That's right.

Q. Now, in the spring of this year the Association gave notice, did it not, that it desired to renegotiate this contract or reopen it?

A. I believe they did. I've been informed such.

Q. Yes, and did you attend meetings of the Dealers Association where that matter was being discussed?

A. That's right.

Q. How many times?

A. The meetings I attended were called—open meetings, at the time—

The Court: He asked you how many.

By Mr. Bassett:

Q. How many times?

A. I don't know. I haven't got the calendar before me.

Q. You were notified by the Association that a meeting was being held, were you not?

A. That's right.

Q. Did you receive a written notice?

A. Sometimes they sent me a postcard. Always they phoned me up and asked me if I would come down and said they would like to have me present if I would come and visit their meeting.

Q. Yes, and isn't it customary to notify all members of [fol. 28] the meetings?

A. I don't know if it is customary. I imagine they do. Most associations do.

Q. Well, you were a member since 1946, you must have had some meetings between 1946 and the spring of '48. Did you attend the meetings?

A. I attended no meetings after the spring of '46 and I have no recollection of receiving notices.

Q. But you paid dues in '46 which carried you over until the spring of '47?

A. Yes.

Q. Until April, '47?

A. Uh-huh.

Q. And you attended no meetings from '46 until the spring of '48?

A. That is right.

Q. And how many meetings did you attend in the spring of '48 when the new contract was being discussed?

A. Oh, I would say approximately four.

Q. Did you participate in the discussion of the contract, the terms of the contract?

A. No, I did not.

Q. Did you make any remarks concerning Saturday opening or closing?

A. Yes, I did.

Q. At how many of those meetings?

A. Probably two of them.

Q. That was the chief matter of discussion, was it not, in connection with the modification of the contract?

A. Yes.

[fol. 29] Q. And as a result was a new contract negotiated and signed, do you know, Mr. Cline?

A. I've been informed that it was.

Q. Do you know the terms of it, as to concerning Saturday closing?

A. Yes.

Q. It was modified, was it not?

A. It was changed.

Q. In what respect?

A. To allowing the dealers to be open until one o'clock Saturday.

Q. You are opening all day on Saturdays now, are you?

A. Yes.

Q. And have ever since the new contract was signed?

A. Yes.

Q. And you have opened all day on Saturdays ever since August, 1947?

A. Yes.

Q. Did you ever tell Mr. Reinertsen that you weren't bound by any contracts any more because of the Taft-Hartley law, that you could open Saturdays and run your business to suit yourself?

A. I told him I believed that was the case.

Q. You did mention the Taft-Hartley law to him, didn't you?

A. Yes.

Q. When was the last time you talked with a representative of the Union about straightening out your relations with the Union and the Association?

A. Approximately a month ago.

[fol. 35] A. I believe they were. I come so late, thought, that I didn't get much chance to know anything that was going on.

Q. Now, you testified, I believe, that you told them that you were not a member of the Association. At which of these meetings did you make that statement?

A. I believe it was the meeting which was held in the Eagles clubroom or the Eagles Hall in Ballard.

Q. Now, that was the last meeting you attended?

A. The second last one, I'd say, the third last one. That was the one prior to the time when they had the opinion of the legal talent on the contract.

Q. Did anyone dissent from your statement that you were not a member of the Association?

A. No one did.

Q. Were the officers of the Association present?

A. Part of the officers were present.

Q. Has the Association ever notified you in any way that it considers you to be a member?

A. No, it has not.

Mr. McCune: That is all, Counsel.

Recross examination.

By Mr. Bassett:

Q. Has the Association ever notified you that you were suspended or expelled from the Association?

A. I phoned the Secretary and asked him—

Q. No, now please answer my question. Have you received notice in writing, official notice, that you are no longer a member, that you have been dropped for non-payment of dues?

[fol. 36] A. No notice in writing.

Q. Have you had any notice to pay dues in any form?

A. No.

Q. When you joined Local 882, the Union, were you initiated?

A. I believe I was.

Q. You took an obligation at that time, did you not?

A. I took whatever is the order of the day there.

Q. Yes. Were you given a copy of the constitution and by-laws of the Local?

A. I was given some little pamphlets.

Mr. Bassett: Mark that, please.

(Pamphlet containing constitution and by-laws of Automobile Drivers and Demonstrators Local Union No. 882 was marked Defendants' Exhibit No. 2 for identification.)

By Mr. Bassett:

Q. Does Defendants' Exhibit 2 for identification look like the pamphlet containing the constitution and by-laws of the Union?

A. I do not recall. It is so long ago that I don't remember what it looked like.

Q. Well, was it something like that?

A. I do not recall.

Q. But you were given a pamphlet containing—

A. I was given something. I do not remember what it was.

Q. The constitution and by-laws?

A. I didn't even read it.

Q. You didn't even read it?

A. No. I tossed it in the ashcan.

Q. You say you did toss it in the ashcan?

A. That's right.

[fol. 37] Q. Immediately?

A. Oh, I think I had it in my desk for several months intending to read it and finally I threw it out.

Q. I see. Do you have any idea, Mr. Cline, how many automobile dealers, used car dealers, are members of this Independent Dealers Association?

A. Oh, I would say roughly that there are between thirty and forty at present are members.

Q. Thirty and forty?

A. I would estimate that. I've never counted them.

Q. Have there ever been any more than that?

A. I do not think there have ever been more than that. There may have been.

Q. Well, does this Association take in dealers who are engaged in selling new cars?

A. No, it doesn't.

Q. It is only used car dealers, is it?

A. That is my understanding.

Q. And you don't recall that there were ever more than thirty members?

A. I don't recall it.

Mr. Bassett: I think that is all.

Redirect examination.

By Mr. McCune:

Q. Mr. Cline, did you attend a meeting of dealers at the Benjamin Franklin Hotel?

A. Yes.

Mr. Bassett: He said he did.

By Mr. McCune:

Q. At that time—

[fol. 38] The Court: At what time? He hasn't testified when it was held.

By Mr. McCune:

Q. Did you attend a meeting at the Benjamin Franklin Hotel? You said you did.

A. Yes.

Q. What date was that held, approximately?

A. Oh, I haven't got the date with me now. It was approximately two months ago.

Q. It was approximately two months ago?

A. Yes.

Q. Were any dues collected at that meeting that you recall?

A. Some of the members were paying their dues and initiation fees.

Q. Did you pay any dues at that time?

A. No.

Mr. McCune: That is all.

Mr. Bassett: That is all.

(Witness excused.)

The Court: I think we will take our usual recess at this time of ten minutes.

(Short recess.)

Mr. McCune: If the Court please, it has been called to our attention that the plaintiff was not sworn, and I think we can——

The Court: I thought he was sworn.

Mr. Bassett: No, I think something intervened, Your Honor.

Mr. McCune: The reporter says he was not.

Mr. Bassett: Somebody spoke, and then he wasn't sworn. [fol. 39] I think we can swear him now to the effect that all the testimony he gave was the truth, the whole truth and nothing but the truth.

The Court: Come forward.

(Mr. Cline approached the Bench.)

The Court: You do solemnly swear that the testimony you have given has been the truth, the whole truth and nothing but the truth, so help you God?

Mr. Cline: I do.

Mr. McCune: That is all, Mr. Cline.

The Court: It was my mistake, gentlemen. I overlooked it.

Mr. McCune: Mr. Miller, please.

JOHN J. MILLER, called as a witness in behalf of the Plaintiff, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. McCune:

Q. Would you state your name?

A. J. J. Miller, John J. Miller.

Q. In what business are you engaged, Mr. Miller?

A. I am in the used car business in Seattle.

Q. And where is your business located?

A. I am at 2300 6th Avenue.

Q. Are you a member of the defendant Union?

A. I wouldn't say I was. I have a withdrawal card which I obtained on the—I think the 1st of March.

Q. Are you a member of the Automobile Dealers Association?

Cross-examination.

By Mr. Bassett:

Q. You say you have been a member of Local 882?

A. That's right.

Q. And when did you become a member, Mr. Miller?

A. I think in November.

Q. At that time——

A. I can tell you the circumstances if you want me to.

Q. November of what year?

A. 1947.

Q. At that time you did not employ any salesmen?

A. No. I was in a partnership with a man by the name of H. W. Shoddy.

Q. One of you joined and one did not?

A. No, sir.

Q. Both of you joined?

A. We were told that——

Q. Never mind——

Mr. McCune: Let him answer, Counsel.

By Mr. Bassett:

[fol. 43] Q. I asked you if you joined or not. Did you or didn't you?

A. Yes, after I had pickets I joined.

Q. Yes. You say you were picketed?

A. That is right.

Q. All right. That was what year?

A. 1947.

Q. 1947. What month?

A. I think in October I had the pickets.

Q. October?

A. Yes.

Q. And you joined the Union?

A. That's right.

Q. And you remained a member of the Union for how long?

A. I remained a member of the Union until the 1st of March. I asked for a withdrawal card and I obtained one. I was——

Q. On what ground, for what reason?

A. I sold out to my partner.

Q. You sold out and you are not in business now?"

A. Oh, yes, I reopened.

Q. You sold out to your partner?

A. That's right.

Q. And when did you reopen?

A. On the 23rd of April.

Q. Do you employ anybody now as a salesman?

A. That's right.

Q. You do have a salesman?

A. Oh, yes.

Q. When you have a salesman who is a member of the Union, the Union does not ask you to be an active member, does it?

A. I either have to be a member of the Union or hire a [fol. 44] salesman.

Q. Well,——

A. Now, I would like to finish, as long as you have asked me.

Mr. McCune: Let him answer, Counsel.

By Mr. Bassett:

Q. I have simply asked you if the Union requires you to be a member of the Union where you do have an employee.

A. I either have to hire a salesman or belong to the Union myself.

Q. That is right. That is all I am interested in, Mr. Miller.

A. That's it.

Q. Now, when was it you say you joined——

A. However, my salesman is not a Union member. I am no longer affiliated with the Union or the Association.

Q. You're not?

A. I withdrew before the contract was signed.

Q. You say your salesman is no longer a member?

A. That's right. He never has been.

Q. How many salesmen do you have?

A. I have one.

Q. When did you join the Association?

A. I joined the Association at one of the meetings at the Benjamin Franklin Hotel, I think it was.

Q. What month?

A. Well, as I said, those meetings took place between the middle of February until the 7th or 8th of April, and it was possibly I'd say in the latter part of March, I mean the latter part of February when I joined the Association.

Q. February, '48?

A. That's correct.

[fol. 45] Q. And when did you resign?

A. The Association?

Q. Yes.

A. The day that the Union signed the new contract with the Association, I think it was on April 14th. I have a copy of my resignation.

Q. After the contract was signed?

A. Prior to the contract being signed.

Q. April 18th?

A. April 14th.

Q. 14th?

A. Yes.

Q. You resigned?

A. Yes.

Q. How does your operation compare in size with Mr. Cline's? Is your business larger or smaller?

A. I have never paid a great deal of attention to Mr. Cline's business. I'd say mine—I have from twelve to twenty cars on my lot.

Q. Twelve to twenty?

A. Yes.

Q. Are you opening your business on Saturday afternoons now?

A. Do I have to answer that question?

The Court: Yes, I think you may answer the question.

A. No, I've been open until 1:00. I've been conforming to the—

By Mr. Bassett:

Q. Contract?

A. No, I wouldn't say contract. I don't consider myself bound to the contract, but in fairness to my fellow [fol. 46] dealers, I'm in a down town locality and I have been closing at 1:00.

Q. I see. You are doing that in fairness to other dealers because they are bound by a contract and you think it would be unfair for you to open when they are required by the contract to be closed?

A. Yes. That will go on my part just so long as the Union tells me that I must do so.

Q. Do you consider yourself a member of the Union because you have a withdrawal card?

A. I do not.

Q. Have you ever resigned from the Union?

A. There's no such thing, as I've been informed.

Q. Well, you can tell them you don't want to be a member any longer, can't you?

A. I don't know of anybody that ever got away with it.

Q. You never told them that?

A. I certainly have.

Q. You say you have told them you don't want to be a member?

A. Oh, yes.

Q. When did you do that?

A. That I don't recall. Sometime in the last sixty days, I believe.

Q. Before this new contract went into effect did you close your shop on Saturdays?

A. Well, during the negotiations, as I told you, from the middle of February until the 14th of April when the contract was signed, I was out of business. I sold out on February 2nd.

Q. Well, I mean before that, Mr. Miller.

[fol. 47] A. Before that? Prior to having pickets I conformed also to the wishes of the Union on Saturday.

Mr. Bassett: I think that is all, Mr. Miller.

Mr. McCune: I think that is all, Mr. Miller.

(Witness excused.)

Mr. McCune: We will call Mr. Reinertsen as an adverse witness, Your Honor, the defendant.

Mr. Bassett: Mr. Reinertsen.

RALPH REINERTSEN, one of the Defendants, called as an adverse witness by the Plaintiff, being first duly sworn, was examined and testified as follows:

Direct examination:

By Mr. McCune:

Q. Would you please state your name?

A. Ralph Reinertsen.

Q. And you are one of the defendants in this case?

A. I am.

Q. By whom are you employed, Mr. Reinertsen?

A. Local 882, Automobile Drivers and Demonstrators.

Q. In what capacity?

A. Business representative.

Q. Your Union is picketing the place of business of the plaintiff in this case?

A. Yes.

Q. What use do you make of the license numbers which are taken down by your pickets of cars which stop at Mr. Cline's place of business?

A. Well, we make very little use of the license numbers. It is simply a method of keeping the fellows on their [fol. 48] toes, we know they're on the job, and we do take the numbers, we check them, and if we find they're a member of any union in the city we will call them if we can and call their attention to the picket line.

Q. But now, how many of those have you called?

Mr. Bassett: Since when? Wait a minute, now.

Mr. McCune: Oh, since the strike started. Since the picket line started.

Mr. Bassett: At Mr. Cline's place?

Mr. McCune: That is right.

A. We have probably—oh, I don't think we've called over four or five of our members.

By Mr. McCune:

Q. So that by and large you just take down these license numbers and make no further use of them, is that right?

A. We make no further use of them. The pickets turn them in, and if we find any of them are members of a union—

Q. Well, do you check all the license numbers?

Mr. Bassett: He said he did.

A. Yes.

By Mr. McCune:

Q. Do you check every license number?

A. Yes.

Q. Then you file them away?

A. In the waste basket.

Mr. McCune: That is all.

Cross-examination:

By Mr. Bassett:

Q. Have you ever made any effort to get in touch with people who are not members of the Union?

[fol. 49] A. No, sir.

Q. You just check those to see if any of them are members of a union?

A. That's right.

A. Affiliated with the American Federation of Labor or the Teamsters?

A. I wouldn't even say that far, Mr. Bassett. We just go to the Teamsters.

Q. You just check to find out whether they are a member of any Teamsters Union?

A. That is right.

Q. And about how many Teamsters Local Unions are there in Seattle, Mr. Reinertsen?

A. I think there are fifteen or sixteen.

Q. Have you any idea how many members there are all told in the Teamsters Union here in Seattle?

A. About—I'll just have to guess at it—seventeen to eighteen thousand, I believe.

Q. Well, then you check to see if any of those license numbers belong to a member of the Teamsters Union?

A. Yes, sir.

Q. If he does, you refer that back to the Local?

A. That's right.

Q. And find out whether he passed the picket line, is that it?

A. That's it.

Q. Have you found, in connection with the picketing at Mr. Cline's place, any members of the Teamsters Union have passed the picket line?

A. Yes, we have.

[fol. 50] Q. What did you do about it?

A. They were immediately cited before their executive boards and reprimanded. I don't know what the penalty was, but probably a talking to and that's all.

Q. How long have you been a business representative of the defendant Union Local 882?

A. About two and a half years.

Q. Were you engaged in the automobile business before that, Mr. Reinertsen?

A. Yes, sir.

Q. In what capacity?

A. Well, at the last I was selling. I've been an owner and a salesman, both.

Q. For how many years had you been engaged in the automobile business before you became a business representative of the Union, just approximately?

A. Thirty years.

Q. Here in Seattle?

A. Spokane, Everett and Seattle.

Q. How many years in Seattle?

A. Ten years.

Q. I wish you would explain to the Court why the Union is desirous of inducing persons in the automobile business to join the Union where they do not employ any Union member. What is the purpose of that? Why do you ask them to become a member of the Union?

Mr. McCune: We object, Your Honor, as improper cross examination and beyond the scope of the direct.

Mr. Bassett: No, I am putting him on as my own witness now.

[fol. 51] Mr. McCune: Oh, are you starting your case?

Mr. Bassett: Yes, while he is on the witness stand.

The Court: You may answer.

Mr. McCune: All right.

RALPH REINERTSEN, one of the Defendants, called as a witness in his own behalf, being previously duly sworn, was examined and testified further as follows:

Direct examination.

By Mr. Bassett:

(The reporter read the last question.)

A. We have contracts with the dealers, both new and used cars, in the City of Seattle, and also the King County Dealers Association, that is in the outlying district of King County. The contract provides certain rules, working rules, compensation, in the way of commissions. A used car dealer will pay seven per cent to a salesman on the selling price of the car, provided there is no trade-in. If there is a trade-in he pays only the difference.

Now, a used car dealer operating his own lot can sell a car for seven per cent less than the other fellow can, and it makes him an unfair competitor. Now, we feel that he should at least live up to the rules of the organization and abide by the contract, and the contract provides specifically that he must pay a commission to a salesman. The wording of that I think would certainly mean that he is required to hire a salesman. Now, may I go a little farther?

By Mr. Bassett:

Q. Yes.

[fol. 52] A. During the war most all of the salesmen were put out of business. They were laid off. A lot of them started out and did a little curbstone selling. That is, they would sell from their home or maybe open a lot. They couldn't afford to hire a salesman, they were just on their own. Maybe they would sell a car or two a week or a month, maybe. So in order to keep everything in line we then took in the owner-operator as a salesman, and that is how it came about that we took in the owners themselves.

Q. The real purpose of taking them in is to have them conform to the contract that you have with dealers who do employ people?

A. That is right.

Q. So there won't be any unfair competition between them?

A. That's it.

Q. A dealer who employs a salesman has to pay him how much commission on a thousand dollar car?

A. \$70.00.

Q. \$70.00. If he sold the car himself he could sell it for \$70.00 less, couldn't he?

A. That's right.

Q. And that would be unfair competition?

A. Yes, sir.

Q. Now, when you take in these owner-operators such as Mr. Cline as members of the Union, are they initiated?

A. Yes, sir.

Q. Was Mr. Cline initiated?

A. Yes, sir.

Q. Do they take an obligation?

[fol. 53] A. Yes, sir.

Q. And what is the substance of the obligation?

A. They swear to abide by the constitution, and by-laws, and such contracts as—we don't use those words, but such contracts as are in force, is the meaning of it.

Q. I will ask you to look at Defendants' Exhibit 2 for identification and tell me what that is.

A. That is our constitution and by-laws of the Automobile Drivers and Demonstrators Local 882.

Q. When Mr. Cline was initiated and obligated was he given a copy of that?

A. Yes, sir.

Q. Was he also given a copy of the International Union's constitution, the Teamsters International Union?

A. Undoubtedly he was, although there was a while we didn't have them. We could have missed out on that one.

Q. Yes. Well, I am interested in Exhibit 2, Defendants' Exhibit 2. Was he given a copy of that?

A. He was given that.

Q. And that has been in force during all the time that he was a member of the Union?

A. Yes, sir.

Q. I notice this is revised as of October 5th, 1945, it says on here.

A. Yes, sir.

Mr. Bassett: We offer this Defendants' Exhibit 2 in evidence.

Mr. McCune: Is it an exact copy?

By Mr. Bassett:

Q. Is it an exact copy?

A. That is an exact copy.

[fol. 54] The Court: Your Union is a Local of the Teamsters Union, is it?

A. Yes, sir.

Mr. McCune: We will not object. I wonder if you could furnish me with a copy. Could you, Counsel?

By Mr. Bassett:

Q. Have you got another copy of this?

A. I don't have one with me.

Mr. Bassett: We can get you one, I think.

Mr. McCune: All right.

Mr. Bassett: This says on the face of it, in answer to your question, "Constitution and By-Laws of Automobile Drivers and Demonstrators Local Union No. 882, affiliated with American Federation of Labor and chartered by International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America. Adopted at Seattle, Washington, March 30, 1937. Revised October 5, 1945." I offered it. Has it been admitted?

The Court: It may be admitted.

(Defendants' Exhibit No. 2 for identification was admitted in evidence.)

Mr. Bassett: I would like to call the Court's attention to one or two provisions of this constitution.

Article VII provides, in Section 3,

"No member of the local shall work for less than the minimum rate of wages recognized by this local. Any member working for less than the scale shall be fined, expelled or both."

Section 4,

"Any member of this local violating any of the other [fol. 55] provisions of any contract between this local and our employers shall be expelled from membership in the Union."

Section 8,

"No member of this local shall try to disrupt the Union or injure it in any shape, manner or form, or persuade members to drop out under penalty of not less than fifty (\$50.00) dollars fine."

Section 10,

"It shall be the duty of all members of this Union to report immediately to the Union, any violations by the employer of the Union wage scale or working agreement. Any member convicted of failure so to do shall be fined, suspended or expelled at the discretion of the Union."

Section 11,

"It shall be the duty of all members of this Union to report immediately to the Union any brother violating any sections of this Constitution, any rule of the Union, or any contract or working agreement between this Union and employers. Any member convicted of failure so to do shall be fined, suspended or expelled at the discretion of the Union."

By Mr. Bassett:

Q. Mr. Reinertsen, showing you Defendants' Exhibit 1 for identification, I will ask you to state what that is.

A. That is a copy of our three contracts, one with the Seattle Automobile Dealers Association, with the King [fol. 56] County Dealers Association and with the Independent Used Car Dealers Association.

Q. Is this a true copy of the agreement?

A. That is a true copy of the agreement, with the exception of the other copy which follows—

Q. I am speaking of the one that was in full force and effect commencing June 20th, 1946, and up until the new one was negotiated in April of this year.

A. Yes, sir.

Q. Now, this is signed by the Independent Automobile Dealers Association and by the Union?

A. Yes, sir.

Q. I don't see here, you said something about new car dealers.

A. The first part of it.

Q. Oh, I see. That is——

A. That is the King County.

Q. Oh, I see. The Independent contract starts at Page 16, the Independent Dealers?

A. That is right.

Q. I see. They are all under one cover here?

A. They are all under one cover.

Q. Yes, but the one we are interested in commences at Page 16 and carries to the end, Page 24?

A. Yes, sir.

Q. And that is a true copy of the contract that was in existence during that period?

A. Yes, sir.

Q. That is June 20, 1926, to what date did you say?

A. To April 14th, 19——

[fol. 57] Q. '48?

A. '48.

Mr. Bassett: We offer this in evidence.

Mr. McCune: I wonder, Counsel, if we could cut out those other contracts. They are apparently on other pages, are they, so there will be no confusion.

Mr. Bassett: I think we could do that. Can we just put a piece of paper around this and clip it.

The Clerk: Could we staple it?

Mr. McCune: If you could staple it, that would be all right.

Mr. Bassett: All right.

(Defendants' Exhibit No. 1 for identification was stapled as indicated.)

Mr. Bassett: Now,——

Mr. McCune: That is satisfactory, Counsel. We have no objection to it.

Mr. Bassett: We offer it in evidence, Your Honor.

The Court: It may be admitted.

(Defendants' Exhibit No. 1 for identification was admitted in evidence.)

Mr. Bassett: I would like to read the clause in this contract, Your Honor, relating to closing of used car businesses.

Section 1,

"That all show rooms and used car lots will close not later than 6:00 p. m. on all week days and shall be closed on Saturdays and Sundays and the following holidays: "—

[fol. 58] The holidays are then enumerated, and after enumerating the holidays it says,

"Each dealer agrees to place in a prominent place on his used car lot or building, a conspicuous sign reading 'Closed Saturdays, Sundays and Holidays.' These provisions relating to closing shall not apply during the general automobile show or used car show sponsored by the Association. Saturday and Sunday work will be permissible on such Saturdays and Sundays as are mutually agreed upon between the Association and the Union."

The contract in Section 4 provides for the minimum commission that is paid salesmen, seven per cent specified.

Mark this, please.

The Clerk: Defendants' Exhibit 3 for identification.

(Copy of Agreement was marked Defendants' Exhibit No. 3 for identification.)

By Mr. Bassett:

Q. Mr. Reinertsen, handing you Defendants' Exhibit 3 for identification, I will ask you to state what that paper is that is labeled an agreement. What is that used for?

A. In the case where a dealer is not a member of the Association, rather than—

Q. When he is not a member of the Association?

A. Where he is not a member of the Association.

Q. Yes.

A. We simply hand him a copy of the contract, which is [fol. 59] the little salmon-colored book.

Q. Like Defendants' Exhibit 2?

A. Yes, and this agreement reads, "I (or we) hereby agree to abide by a certain contract existing between Independent Automobile Dealers Association and the Automobile Drivers and Demonstrators Union, Local 882,

dated" whatever date it is, "and effective" whatever date we use, "a copy of which is in my (or our) possession."

Q. Now let me understand you. You ask those dealers to sign this who do not have in their employment salesmen?

A. No, not necessarily. They may have a salesman, but we expect a contract with every dealer.

Q. Oh, I see. If a dealer is not a member of the Association—

A. If a dealer is not a member of the Association.

Q. Then you go to him and ask him to sign this?

A. That's right. That is in lieu of the—

Mr. Bassett: I'd like to introduce this in evidence.

Mr. McCune: We object until we know the purpose.

Mr. Bassett: For the purpose of illustration, is all. It is just a blank form.

Mr. McCune: I'd like to interrogate the witness concerning it, if you don't mind, Counsel.

Mr. Bassett: Go ahead.

Mr. McCune: Mr. Reinertsen, do you have these signed agreements with all dealers who are not members of the Association?

A. We have had them all, with the exception of two or [fol. 60] three who have sprung up in the last little while, one of them who was a witness here just ahead of me.

Mr. McCune: You have this signed with all dealers in the City of Seattle, then?

A. Who are not members of the Dealers Association.

Mr. McCune: Who are not members of the Dealers Association?

A. Yes, sir.

Mr. McCune: Or whom you do not consider to be members of the Dealers Association?

A. Yes, sir.

Mr. McCune: I think that is all, Counsel. We object to its introduction, Your Honor, on the ground that it is a self-serving document and that they apparently seek to prove that this man is a member of the Association because they did not ask him to sign one of these which has nothing

to do with whether or not he is a member of the Association.

The Court: Objection overruled. It may be admitted.

(Defendants' Exhibit No. 3 for identification was admitted in evidence.)

By Mr. Bassett:

Q. Did you ask Mr. Cline to sign this form, Defendants' Exhibit 3?

A. No, sir.

Q. Did he ever tell you that he was not a member of the Dealers Association?

A. I believe he did.

Q. Since this picketing?

[fol. 61] A. I believe he did.

Q. When?

A. As he says, about a month ago, about the time we signed the other contract I believe he did tell me.

Q. Told you the first time. Was that the first time he ever told you that?

A. That's right.

Q. Have you seen him concerning the dispute that exists out there recently?

A. About a month ago he called. He called Mr. Rohan, and I went out there to see him.

Q. What occurred at your meeting at that time?

A. Well, I would have to refer to the call. He called and said, "I understand you have a new contract and I'd like to see it."

Q. Referring to the contract of April—

A. Of April 14th. "I'd like to see it, Maybe we can get together on it." So I went out. I went out in the morning, I think it was in the morning, and sat down and talked with him a while, and I said, "You wanted to see this contract," and he said, "Yes, I would like to," so I showed it to him.

(Agreement between Independent Automobile Dealers' Association, Inc., and Automobile Driver and Demonstrators Local No. 882, was marked Defendants' Exhibit No. 4 for identification.)

By Mr. Bassett:

Q. Now just at that point I will ask you, Defendants' Exhibit 4 for identification is a copy of that contract, a mimeographed copy?

A. This is a mimeographed copy.

[fol. 62] Q. Between the Union and the Independent Automobile Dealers Association?

A. Yes, sir.

Q. Signed what date?

A. April 14th, 1948.

Q. Is that a true and correct copy?

A. That is a true and correct copy.

Q. Was it mimeographed by the Union and distributed to all dealers of the Association?

A. Yes, sir.

Mr. Bassett: We offer this in evidence.

Mr. McCune: No objection, Counsel.

The Court: It is admitted.

(Defendants' Exhibit No. 4 for identification was admitted in evidence.)

By Mr. Bassett:

Q. Now, you say you showed him a copy of Defendants' Exhibit 4 at that time?

A. Yes.

Q. What did you say to him?

A. He read it over. I think he read every word of it, at least he took plenty of time for it, and he said, "All right, what will I have to do now?" I said, "We ask that you sign the contract and live up to the provisions of the contract." "Well," he said, "what does that mean?" I said, "It means closing at one o'clock on Saturdays now, and of course putting on a salesman." "Well," he said, "I'm not going to put on a salesman." "Well," I said, "you wouldn't be complying with the contract unless you did." So he said, "Well, let me take this and show it to my attorney," and I said, "No, I don't think that [fol. 63] is necessary, Cline. You can probably find one somewhere else, but I'm not going to leave you the contract unless you sign one," and that was about all that was said.

Q. Did he say anything about wanting to be reinstated as a member of the Union?

A. He said, "I can't hire a salesman." I think he said, "What about myself," and I said, "No, that wouldn't do, you know that," and I don't believe it went any further so far as that goes.

Q. Under the Union rules and principles of organized labor is a man who works behind a picket line ever eligible for membership?

A. Never.

Q. Are you familiar with Mr. Cline's operation, I mean the size of the business and the number of cars he has there?

A. Yes, I have watched it pretty closely.

Q. Are there any dealers who are members of the Association who have an operation that isn't any larger than his or perhaps smaller than his who do employ salesmen?

A. Oh, yes, several of them. In fact, Cline I think is considered one of the bigger dealers.

The Court: He's what?

A. I think Cline has been considered one of the bigger dealers.

By Mr. Bassett:

Q. About how many dealers were members of the Association as of April of 1948 when the new agreement was signed?

A. I couldn't answer that, Mr. Bassett. I don't know.

Q. Have you some idea?

A. It seems to me it was around forty or forty-five. I [fol. 64] wouldn't say.

Mr. Bassett: I think you may cross-examine.

Cross-examination.

By Mr. McCune:

Q. Mr. Reinertsen, as I understand your testimony you stated that there were—

The Court: Is your name Reinertsen or Anderson?

A. Reinertsen.

The Court: Reinertsen?

A. Yes, sir.

By Mr. McCune:

Q. You stated that there were quite a few dealers who were known as what are termed curbstome dealers who are unable to employ salesmen?

A. Yes.

Q. And in fairness to them you let them join the Union, is that right?

A. Yes.

Q. You thought that was the fair thing to do?

A. That's right.

Q. And if they didn't join you picketed them is that right? Is it or isn't it?

A. I don't believe we ever had any occasion to picket anyone.

Q. Did you ever picket Mr. Miller?

A. Yes.

Q. And he later joined the Union, didn't he?

A. Yes, sir.

Q. And didn't you threaten to picket Mr. Cline unless he joined the Union?

[fol. 65] A. No, I don't think there were any threats, because Cline brought it on himself. I didn't threaten him at all.

The Court: What do you mean by a curbstome dealer?

A. Well, Judge, they are referred to—

The Court: A fellow who has his place of business under his hat?

A. That's it. He just sells on the curb. He puts a for sale sign on his car.

By Mr. McCune:

Q. You mean that Cline came in voluntarily and said, "Now, boys, I want to join the Union"?

A. I don't know. I had nothing to do with his joining the Union.

Q. That was Mr. Rohan, wasn't it, so you wouldn't know whether or not Mr. Rohan told him he would picket him, do you?

A. No, I wouldn't know.

The Court: I think we will take a recess at this time until 1:30.

(Thereupon, at 11:56 o'clock A. M., a recess herein was taken until 1:30 o'clock P. M.)

[fol. 66]

Wednesday, May 19, 1948.

1:30 o'clock P. M.

(All parties present as before.)

Mr. Bassett: I think you were cross-examining.

Mr. McCune: I believe I was, Counsel.

RALPH REINERTSON (resumed the stand)

Cross-examination (Continued).

By Mr. McCune:

Q. I believe, Mr. Reinertsen, you testified that anyone who had worked behind a picket line was forever barred from again belonging to a union, is that right?

A. That is my understanding. I haven't any authority to—

Q. So that—well, that is the way it seems to operate?

A. That is the belief, yes.

Q. You have been a union representative for some years, haven't you?

A. Two and a half years.

Q. And that is the general understanding?

A. Yes, that is the general understanding.

Q. Well, now, Mr. Reinertsen, it is your position then that Mr. Cline, in order to stop this picketing, must close

Saturdays at one o'clock? That is correct, that is one contention, isn't it?

A. Yes, sir.

Q. That he must hire a Union salesman, that is another one, isn't it?

A. That is right.

Q. And that if he sells cars himself under the contract he [fol. 67] must pay the commission to that salesman of seven per cent, is that right?

A. Yes, sir.

Q. Now, you have other dealers, do you not, who belong to the Union and employ no salesmen? I believe you testified to that effect.

A. Yes, we do.

Q. And they don't have to pay this commission to anyone, do they? They retain it themselves?

A. That's right.

Q. So that by virtue of not being a member of the Union he would be deprived of the privilege of operating his business and keeping the seven per cent for himself?

A. Uh-huh.

Q. That is correct, is it not?

A. That is correct.

Q. And I believe you stated that when you called his place of business he asked for a copy of the contract and you refused to give it to him, you said that you weren't going to give it to him unless he signed the contract, is that correct?

A. That was not by telephone, that was when I was out there.

Q. When you were out there, I mean you told him you wouldn't give him a copy unless he signed the contract?

A. That's right.

Q. Mr. Cline then is not now a member of your Union, is he?

A. No; sir.

Q. And he has not been since when?

A. October, I think, we dropped him sometime in October.

Q. October of 1947, is that right?

[fol. 68] A. 1947.

Mr. McCune: That is all.

Redirect examination.

By Mr. Bassett:

Q. The dealers who do not employ salesmen are members of the Union, are they not?

A. Yes, sir.

Q. And they conform to the contract that the Union has with all other dealers who do employ members of the Union?

A. Yes.

Mr. McCune: With the exception that they retain the seven per cent themselves.

Mr. Bassett: If they don't employ anybody, certainly they retain it.

Mr. McCune: It is your position, then, that this man should no longer retain the seven per cent for himself but should pay it to someone else, is that right?

A. That is right.

By Mr. Bassett:

Q. Mr. Reinertsen, if Mr. Cline should employ a salesman, that would not prevent him from selling, would it? He could still sell?

A. He could still sell, but the commission would have to be paid on everything he sold as well as what the man sold himself.

Q. I see. That is the contract that you have with all the other dealers?

A. That is the contract, yes.

Mr. Bassett: That is all.

Mr. McCune: That is all, Mr. Reinertsen.

(Witness excused.)

[fol. 69] Mr. McCune: I would like to recall Mr. Cline for a moment, Your Honor.

GEORGE CLINE, the Plaintiff, recalled as a witness in his own behalf, being previously duly sworn, was examined and testified further in rebuttal as follows:

Direct examination.

By Mr. McCune:

Q. Mr. Cline, have you ever had occasion to compute the percentage of your gross sales which represented profits from your business after payment of all costs other than any remuneration for yourself?

A. The company that keeps my books informs me that the—

Mr. Bassett: Just a minute. I object to that. I think that is hearsay, and the audits would be the best evidence.

The Court: Well, his answer is not responsive to the question.

By Mr. McCune:

Q. Have you ever had occasion to compute the percentage of your gross sales which represents the net profit that you receive after payment of all costs other than remuneration to yourself?

A. Yes.

Q. And what is that percentage?

A. It runs from eight and one-third down to months when I lose money.

Q. And if you had a salesman to whom you paid seven per cent of the gross sales, where would that seven per cent come out of?

A. It would have to come out of the eight and one-third [fol. 70] or less, and the months when I'm running in the red I would have to acquire money from some place or other to pay this seven per cent to the salesman.

Q. Mr. Cline, when did you first advise a representative of the Union that you were not a member of the Association?

A. I informed Mr. Rohan the day he brought the pickets to my lot.

Q. When was that?

A. That was the Saturday before Labor Day in 1947.

Q. And what was said?

A. He said he thought I was still a member inasmuch as I had joined in 1946 and he had not been informed that I was no longer a member.

Q. What did you tell him?

A. I told him that I couldn't help what he had not been informed of and that since I was no longer a member of the Association I naturally would not be bound by their contract.

Q. Would you be able to continue in business if you complied with the requirements which the Union—

Mr. Bassett: I object to that as calling for a conclusion of the witness.

The Court: Objection sustained.

Mr. McCune: I think that is all, Your Honor. I have a witness who is to be here at a quarter of 2:00. This is my last witness.

The Court: Do you have any further witnesses, Mr. Bassett?

Mr. Bassett: No, Your Honor.

The Court: Well, we can take a recess until a [fol. 71] quarter of 2:00, if you care to.

Mr. McCune: Yes.

(Witness excused.)

Mr. Bassett: What will he testify to? Maybe we will admit it.

Mr. McCune: He will testify that during the month of March he and Mr. Cline, together with two other dealers, were at a dealers meeting, and he will have with him a list of the members who were at that meeting bearing the signatures on a page, they have written their names down, together with their addresses. The list will show that following the name of George Cline, Mr. Cline having written his name on this list, that he wrote the word "visitor", being part of the Association records.

Mr. Bassett: Is he an officer of the Association?

Mr. McCune: He is the son of the Secretary. The Secretary of the Association is out of town, but the records are in his possession.

Mr. Bassett: Well, we'll wait and see.

Mr. McCune: Very well.

The Court: Well, we will take a recess then until the witness gets here.

Mr. Bassett: I don't think it is material, Your Honor, but I am just curious to see it inasmuch as Counsel made the statement he did.

(Short recess.)

Mr. McCune: I'd like to call Mr. Sims, Your Honor.

[fol. 72] RICHARD SIMS, called as a witness in behalf of the Plaintiff, being first duly sworn, was examined and testified in rebuttal as follows:

Direct examination.

By Mr. McCune:

Q. Would you state your name, please?

A. Richard Sims.

Q. And what business are you in, Mr. Sims?

A. The used car sales business.

Q. And you are associated in that with your father?

A. That is correct.

Q. And is your father an officer of the Independent Automobile Dealers Association?

A. He was recently elected Secretary of the Association.

Q. And where is your father now?

A. He is in California.

Q. And the records of the Association are kept where?

A. In our office.

Q. I served you with a subpoena and asked you to bring down here a particular document. Do you have it with you?

A. Yes.

Mr. McCune: If the Court please, attached to the instrument that I am interested in is some correspondence with the Association, notices of one kind and another. Now, I can put that in. I hardly think that it is fair to do so, however. It relates to correspondence between the Association and their attorneys. It just all happens to have been clipped together.

Mr. Bassett: Well, let's see the paper that you are interested in.

[fol. 73] (Mr. Bassett examined papers referred to.)

Mr. Bassett: Let's go ahead and detach it.

Mr. McCune: All right. Mark that, please.

The Clerk: Plaintiff's Exhibit No. 5 marked for identification.

(Two papers containing names and addresses were marked Plaintiff's Exhibit No. 5 for identification.)

By Mr. McCune:

Q. I show you what has been marked for identification as Plaintiff's Exhibit 5. It is an instrument containing a number of signatures. I ask if your signature is on this instrument?

A. Yes. This is my signature.

Q. That is your signature, and under what circumstances did you affix your signature to this instrument?

A. We were attending a meeting of the Association at the Benjamin Franklin Hotel March 31st and at the close of the meeting our attorney asked us to pass this around and asked those in attendance to affix their signatures to let them know who was there that evening.

Q. And this is the list that was—

A. That is correct.

Mr. McCune: We offer this in evidence, Counsel.

Mr. Bassett: May I inquire?

Mr. McCune: Yes.

Mr. Bassett: You say the purpose of this was to ascertain who was present there that evening, is that what the attorney said?

A. To the best of my knowledge that is correct. I may add that there might have been some who did not sign it. [fol. 74] Mr. Bassett: There were some there who did not sign at all, is that right?

A. That I can't say for certain, but I feel so.

Mr. Bassett: Did he simply request those present to sign this and give their address opposite their names?

A. That is correct.

Mr. Bassett: I have no objection to this.

The Court: It may be admitted.

(Plaintiff's Exhibit No. 5 for identification was admitted in evidence.)

By Mr. McCune:

Q. Are you a member of the Association, you personally?

A. I am the assistant manager of the Automobile Exchange, my father is the manager, and in his absence I act as a member of the Association.

Q. All right, fine, Mr. Sims, thank you.

Mr. McCune: That is all.

Cross-examination.

By Mr. Bassett:

Q. Are you engaged in selling used cars, Mr. Sims?

A. Yes.

Q. Are you a salesman yourself?

A. Salesman and owner of cars.

Q. Are you in partnership with your father?

A. We have a working arrangement where we have mutual ownership of—

Q. Are you a member of the Salesmen's Union?

[fol. 75] A. No, sir.

Q. You are not. You are a member of the Association?

A. Yes.

Q. Does your firm have a contract with the Union, Local 382, the Salesmen's Union?

A. Yes.

Q. Do you employ salesmen at your place?

A. Yes, we do.

Mr. Bassett: I think that is all.

Redirect examination.

By Mr. McCune:

Q. Then when you sell a car yourself a commission is paid to the salesman, is that right?

A. That is correct.

Mr. McCune: That is all, Mr. Sims.

(Witness excused.)

Mr. McCune: I'd like to recall Mr. Cline, Your Honor.

GEORGE CLINE, the Plaintiff, recalled as a witness in his own behalf, being previously duly sworn, was examined and testified further in rebuttal as follows:

Direct examination.

By Mr. McCune:

Q. I show you what has been marked for identification as Plaintiff's Exhibit 5, Mr. Cline, and I ask if this is your signature?

A. Yes, it is.

Q. And did you attend the meeting concerning which [fol. 76] Mr. Sims has testified?

A. Yes, I did.

Q. And did you write the word "visitor" which appears after your address?

A. Yes, that is in my handwriting.

Q. One further question, Mr. Cline. Has your business fallen off as a result of the picketing?

A. Yes, it has.

Q. To what extent?

A. Well, as near as I can determine the volume has dropped around eight to ten thousand dollars a month in sales.

Q. It is rather difficult to determine that exactly?

A. Well, it is difficult to determine it exactly. You would have to take a recap of the monthly exhibit. I know that I used to have the money to pay about two thousand to twenty-five hundred dollars worth of bills on the 10th of every month, and I very often have no money now to pay any bills.

The Court: Do you keep books?

A. I keep books, but the overhead runs on and if there is no income there is no money to pay it.

Mr. Bassett: I object to that and ask that it be stricken.

The Court: Well, I say you keep books, keep an account of your business?

A. Yes.

The Court: All right.

Mr. McCune: That is all.

[fol. 77] Cross-examination.

By Mr. Bassett:

Q. Why did you write that word "visitor" after your name on this Exhibit 5?

A. They were soliciting new memberships, the Association was soliciting new memberships at the meeting, that was the purpose of the meeting, and I wished to have it very plain at the time that I was attending as a visitor.

Q. And why did you want it to be so plain that you were only there as a visitor?

A. Somebody had suggested to me that if I attended the meetings that I was invited to, that it might be considered that I was a member, and I did not wish to have any misunderstanding in this. In fact, I informed them at that meeting that I could not place myself—

Q. Just a minute. Answer my question. You are the only person that put that word "visitor" after their name on this list, isn't that a fact?

A. That appears to be correct, yes.

Q. Yes, and you heard the lawyer announce that they wanted to get the names of the persons present and their address, didn't you?

A. Yes.

Q. It had nothing to do with membership, did it?

A. It was a membership drive meeting.

Q. You wanted to make it appear then that you were there just as a visitor?

A. That is right.

Q. And you didn't want to be a member?

A. That is right.

[fol. 78] Q. Why don't you want to be a member of this Association? Why did you quit?

A. The Association was bound by a contract which had no termination date and I don't want to be any party to a contract which never terminates.

Q. No, now who told you it had no termination date?

A. The lawyer told us that at that meeting.

Q. It was reopened, wasn't it?

A. It may be reopened but not terminated, he told us.

Q. It can be reopened each year at the will of either party, can't it? It extends for one year and unless notice to reopen is given thirty days in advance it continues for another year, isn't that the way it reads?

A. That was not the opinion of the legal talent at the meeting.

Q. Is that why you didn't want to be a member of the Association?

A. I stated very carefully at the meeting that I could not see my way to joining their Association until they terminated that contract, until it was legally terminated and a new one could be negotiated without any recourse to the old one.

Q. Well, a new one was negotiated, wasn't it?

A. I've been told one was.

Q. Now, when did you say you discontinued being a member of this Association?

A. I ceased attending all meetings—

Q. No, when did you notify the Union? You said you notified the Union in August, 1947, that you were no longer a member of the Association.

[fol. 79] A. I informed Mr. Rohan personally that I was no longer a member of it.

Q. Yes, and that is the time when you deemed yourself out of the Association?

A. No, I deemed myself out of it way back in the middle of 1946.

Q. And why did you do that?

A. I decided that the membership of the Association was under the control of the labor union and it was just no place for me.

Q. You didn't want to be a member of the Union in August, 1947?

A. No.

Q. You wanted to operate your business to suit yourself, didn't you?

A. That is exactly right.

Q. And you did that when you thought the Taft-Hartley law gave you stimulus and that backbone to do it, isn't that a fact?

A. That and some other things.

Q. Yes. Well, you still want to operate your business as you please, don't you?

A. That is right.

Mr. Bassett: That is all.

Mr. McCune: That is all, Mr. Cline.

(Witness excused.)

Mr. McCune: That is all, Your Honor.

The Court: Do you wish to be heard, gentlemen?

Mr. Bassett: We have no further evidence, Your Honor.

[fol. 80] The Court: I will hear your argument.

(Whereupon, the matter was argued to the Court by respective Counsel.)

The Court: You haven't any other authorities to cite except this?

Mr. McCune: Your Honor, I am satisfied with that memorandum and the Gazzam case and the Hanke case.

The Court: Gentlemen, I will try and pass upon this Friday morning, if I get a chance. I can't work on it this evening. If I can't pass on it Friday morning at 9:30, why I will notify Counsel. It has been going on so long that a few days longer won't hurt anything. At 9:30 Friday morning, if you don't hear from me in the meantime, report back at 9:30. My clerk will make a note of it. I am working on another case, gentlemen, is the reason that I may not be able to do that, and I have to do most all my decision work at night and I can't do it tonight.

(Whereupon, at 3:45 o'clock P. M., Wednesday, May 19, 1948, a recess herein was taken until 9:30 o'clock A. M., Friday, May 29, 1948.)

[fol. 81]

Friday, May 21, 1948.

9:45 o'clock A. M.

(All parties present as before.)

The Court: I will take up this Cline versus the Automobile Drivers case first.

Mr. Bassett: If the Court please, may I make a formal motion at this time. I think we started to argue without making a formal motion.

The Court: All right, proceed.

Mr. Bassett: While Your Honor understands that we are asking that the plaintiff's application for temporary injunction be denied, I don't think we made such a motion. I would like to make a formal motion to that effect at this time and have the record show that we claim the protection of the 1st and 14th Amendments to the Constitution of the United States.

COURT'S ORAL OPINION

The Court: Gentlemen, I had hoped to be able to prepare and file a written opinion in this case of Cline versus the Automobile Drivers and Demonstrators Local Union No. 882, Cause No. 395781 of this court. I have, however, made some notes, and will dictate my decision to the reporter so Counsel may get copies from the court reporter.

This case, which comes up upon an order to show cause why a temporary injunction pendente lite should not be entered in the case, in my opinion involves the same [fol. 82] fundamental facts as are involved in the case of Hanke versus the International Brotherhood of Teamsters, Cause No. 392989 of this court. I see no distinction in the ultimate facts as established by the evidence. While it is contended by Counsel for the defendants herein that a distinction exists between the two cases, by reason of the former membership of the plaintiff in the local defendant Union and a contract that was entered into at a time when he was a member, I think that the correct test to be applied is the relationship between the parties at the time of the dispute between them rather than their relationship prior thereto.

The evidence in the case at bar discloses that the relationship as between the plaintiff and the defendant Union

as a member or as a participant in a contract between the employers' Association had ceased at the time of the dispute here in question. So I don't think that that distinction has anything to do with the ultimate issue to be decided in this case.

I have read the able opinion of Judge McDonald in the case of Hanke versus the International Brotherhood of Teamsters, and I concur in the views expressed in his opinion. I concur in his view that the recent en banc decision of the Supreme Court of this state in the case of Gazzam versus Building Service Employees Union, 129 Washington Decisions 455, is binding upon the Superior Courts of this state and is controlling in this case as well as the Hanke case.

I desire, with due deference, without any intention of [fol. 83] improper or inappropriate criticism of either our national or state Supreme Court or any of the Judges thereof, to respectfully point out what seemed to me to be inconsistencies and lack of uniformity in the decisions of our Supreme Court in disputes involving labor unions and labor disputes. That such inconsistencies existed is admitted in the majority opinion written by Judge Simpson in the Gazzam case. I deem it my duty as a Judge of the Superior Court to make such a statement in this case, in order that discrepancies or inconsistencies in its decisions may be either harmonized or corrected so that the law relative to such disputes may be made a certain and definite guide to trial judges and the bar of the state. That such comment or statement is proper in all cases is established, I believe, by the decisions of our state Supreme Court. See Walker versus Gilman, 25 Wash. 2nd 557. Dissenting opinion re Torenson's Estate, 28 Wash. 2nd blank, 128 Wash. Decisions 659, 691.

It is stated in the majority opinion in the Gazzam case at Page 459,

"Discrepancies creep in our decisions from time to time and it is frequently necessary that a review be had of our opinions, at which time the cases may be analyzed, approved or overruled, to the end that the law may be made certain, so that individuals and organizations and members of the bench and bar may be advised of the holdings of this court. In cases like the one at bar, organized, non-organized labor and em-

ployers are entitled to definite decisions regarding their [fol. 84] rights and liabilities, to the end that they may conduct their affairs as law abiding citizens, without danger to themselves or their property. To that end we shall call attention to our most recent decisions."

First, as noted in the exhaustive majority opinion in the Gazzam case, the decisions in recent years of both the national and state Supreme Courts have been neither uniform nor harmonious nor consistent in cases involving labor disputes or disputes between labor unions, employers, employees and third parties, and this is especially true since the enactment of the National Wagner-LaGuardia Act and similar labor acts such as our own State Labor Act, Section 7612, Remington's Supplement.

While Sections 78 and 79 of that latter Act were held unconstitutional by our state Supreme Court in the case of Blanchard versus Golden Age Brewing Company, 188 Wash. 396, the Supreme Court of the United States held the Wagner-LaGuardia Act, upon which our State Labor Act, supra, was patterned, a valid enactment. While our state Supreme Court has never overruled its decision in the Blanchard case, its subsequent decisions, in my opinion, have apparently either ignored or failed to follow such earlier decision. It is noted, however, that Judge Steinert, the writer of the decision in the Blanchard case, has consistently adhered not only to such decision, but also to his opinion that all picketing is coercive.

Second, while neither the Blanchard decision nor any subsequent decision of our Supreme Court has held [fol. 85] invalid Section 13 of our State Labor Act, supra, which defines a labor dispute, decisions subsequent to the Blanchard decision have not been harmonious or uniform either as to the meaning of a labor dispute or as to the applicability of the federal decisions, in either so-called jurisdictional disputes between negative unions themselves or disputes between unions and, one, persons employing non-union members, and two, persons with no employees.

In this connection it is noted that said Section 7612-13 of our State Labor Act provides,

"A. A case shall be held to involve or to grow out of a labor dispute when the case involves persons who

are engaged in the same industry, trade or occupation, or have direct or indirect interests therein, or who are employees of the same employer, or who are members of the same or an affiliated organization of employees, or employees, or associations of the same employer."

I do not quote all of Subdivision A there for the reason it is not material.

"C. The term 'labor dispute' includes any controversy concerning terms or conditions of employment or concerning the association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment."

The rest I italicize:

"Regardless of whether or not the disputants [fol. 86] stand in the approximate relation of employer and employee."

The italics that I have indicated are mine. In this connection see two cases which have been cited by Counsel just this morning to me, so I haven't had a chance to thoroughly analyze those cases. See *Milk Drivers Union versus Lake Valley, etc., Incorporated*, 311 U. S. 92, 85 Law Edition 63; *Bakery Sales, etc., Union versus Marshall*, U. S. Supreme Court Advance Opinions, Vol. 92, No. 12, Page 599.

Three, while the majority decision in the *Gazzam* case apparently holds that its en banc decision in the case of *State ex rel Lumber and Sawmill Workers versus Superior Court*, 24 Wash. 2nd 622, 166 A.L.R. 165, is not inconsistent with its later decision in the case of *Swenson versus Seattle Central Labor Council*, 27 Wash. 2nd 193, I respectfully submit that the two decisions are fundamentally opposed and irreconcilable. In addition to the reasons set forth in Judge Able's dissenting opinion in the latter case, I believe that Judge Schwollenbach, author of the majority opinion, inadvertently overlooked the fact that at the time of the commencement of the dispute there in question between plaintiff and defendants, a member of the Teamsters Union affiliated with the Central Labor

Council was an employee of the plaintiff. The dispute between the plaintiff and defendant in that case was in my opinion not a jurisdictional dispute, but rather a dispute over working conditions.

[fol. 87] In the case of Carpenters, etc., Union versus Ritter, 315 U. S. 722, 86 Law Edition 1443, 62 Supreme Court 807, cited in the Swenson case, the Supreme Court of the United States held that a Texas statute forbidding the kind of picketing there in question was valid and not in conflict with the decision of the Supreme Court in the case of Thornhill versus Alabama.

Because the State of Washington has no statute similar to that of Texas fixing such a limit of permissible contest open to industrial combatants, I held in my memorandum decision in the Swenson case that the Ritter case was neither applicable nor controlling in labor disputes in this state.

It was held by our Supreme Court in the majority opinion in the Swenson case that the Ritter case was applicable and that the picketing in question in the Swenson case was unlawful because, first, the plaintiff employed no union men; two, it violated a cross-check certificate made by a regional director of the War Labor Board, and third, because it was coercive.

It is stated in the majority opinion in the Gazzam case at Page 467 of the case as reported in 129 Wash. Decisions, No. 13, as follows:

"We hold that the acts of respondents in so far as the picketing was concerned were coercive, first, because they violated the provisions of Remington's Revised Statutes Supplement Section 7612, Subdivision 2."

You may italicize these words:

"And second, because they were in violation of the, [fol. 88] rule of common law as announced in the cases just approved."

Italics mine.

While I personally believe that no distinction can be drawn between picketing an employer's place of business and placing him on an unfair list, the Gazzam case seems to indicate otherwise. Both forms, such as picketing an employer's place of business or placing him on an unfair list, in my opinion are coercive, both are species of persuasion. The object and purpose of both is to inform the public and the members of its union of the dispute between the employer and the union. Peaceful picketing in my opinion is that which is free from violence or threatened violence, or interference with the workers of an employer. Such I found was the character of the picketing involved in the Swenson case. Peaceable picketing, in my opinion, under the decisions of the Supreme Court, prior to the Swenson and Gazzam cases, was lawful and not subject to injunction, even though it was coercive in nature.

Under the decisions in the latter cases, it seems that all picketing is subject to injunction if it is in any nature or any wise coercive. While I find that the picketing here in question in the case at bar violated no statute, was and is free from violence, threats of violence, intimidation or interference with any workers or employees of the plaintiff, it is my duty and I am constrained to hold that, under the decision in the Gazzam case and the Swenson case, the plaintiff is entitled to a temporary injunction, irrespective of my personal views concerning peaceful picketing.

[fol. 89] Findings and conclusions and order granting to the plaintiff temporary injunction pendente lite upon his filing an approved bond in the sum of \$1,500.00 may be prepared, served and presented for signature and entry.

This disposes, I think, Mr. Bassett, of your motion made this morning. Findings and conclusions and judgment will show a denial and an exception.

COLLOQUY

Mr. Bassett: I didn't quite understand Your Honor's finding concerning the contract that existed in August, 1947, when this dispute arose. Of course, the testimony is undisputed that there was a binding contract, he was a party to it, he was a member when it was negotiated the previous April, April, 1946, and the breach of that contract was the thing that brought about this picketing. I didn't under-

stand Your Honor to consider that, and we of course contend that that is——

The Court: I did consider it, and I can't see any distinction here.

Mr. Bassett: I see. That is a distinction, of course——

The Court: I can't see any distinction between this case and the Hanke case.

Mr. Bassett: Well, that is the only distinction, Your Honor, the contract. There was no contract in the Hanke case.

The Court: I think the distinction is—at least in my limited time I have not found any cases which oppose such a distinction.

Mr. McCune: My only suggestion would be, Your Honor——

[fol. 90] The Court: You have a point there, however.

Mr. Bassett: I think that is a fact. It was not apparent in that case.

The Court: I have explained my views fully so that the Supreme Court may have the benefit of them, or the Supreme Court of the United States if this case goes to it.

Mr. Bassett: That is exactly why I called attention to this admitted breach of contract.

The Court: Yes.

Mr. McCune: If the Court please, I have only this suggestion to make with respect to the bond, that I wonder if the Court could reduce that to \$1,000.00. This man has been considerably impoverished by the situation which has prevailed.

Mr. Bassett: Your Honor, I was going to ask——

The Court: Well, in view of the probable ultimate destination of this case, I think the bond is reasonable.

Mr. Bassett: I was going to ask for a much larger bond, because this case is undoubtedly going to affect the activities of this Union and its contracts with other similar employers. I noted that they were quite interested, they are all here to see what was going to happen in this case, and we can expect a great deal of damage as a result.

Mr. McCune: I question whether that is recoverable damage, Your Honor.

The Court: I think a \$1,500.00 bond will cover the matter. I want to express my appreciation to Counsel

[fol. 91] for the able and courteous manner in which both have presented this case.

Mr. Bassett: Thank you, Your Honor.

Mr. McCune: Thank you, Your Honor.

(Whereupon, at 10:15 o'clock A. M., Friday, May 21, 1948, an adjournment herein was taken.)

[fol. 92] IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR KING COUNTY

No. 395781

MEMORANDUM DECISION—Labor Unions—Picketing.

GEORGE E. CLINE, Plaintiff,

vs.

AUTOMOBILE DRIVERS ETC. UNION, Defendants.

MESSRS. McCUNE & YOTHERS, Attorneys for Plaintiff,

MESSRS. BASSETT & GEISNESS, Attorneys for Defendants.

Being of the opinion that my oral decision on May 21st was perhaps prolix and covered discussion or argument concerning questions and matters which have become moot by reason of the decision of the supreme court in the case of *Gazzam v. Building Service Employees*, 129 Wash. Dec. 455, I have decided, upon my own motion, to withdraw said oral decision and substitute therefor this written memorandum decision. It will be signed and entered prior to the signing and entry of findings of fact and order, and will supersede and take the place of said oral decision.

The fundamental facts in this case, in my opinion, are, in ultimate effect, substantially identical with those in the case of *Hanke v. International Brotherhood of Teamsters Etc. Union*, No. 392989 of this court. While it is contended in an able argument by counsel for the defendant that a distinction exists between the Hanke case and the case at bar, by reason of the former or past relationship between the parties to this action, I believe that the correct [fol. 93] applicable test herein is the relationship between the parties at this time.

The supreme court in the *Gazzam* case *supra*, held that such picketing as involved herein should be enjoined, the court on page 467 saying:

"We hold that the acts of respondents, in so far as the picketing was concerned, were coercive—first, because they violated the provisions of Rem. Rev. Stat. (Sup.), 7612-2, and, second, because they were in violation of the rules of common law as announced in the cases just approved. (Italics mine.)

My decision relative to picketing in the case of *Swenson v. Seattle Central Labor Council*, 27 Wn. (2d) 193, was reversed by the supreme court, and the supreme court in the subsequent *Gazzam* case expressly approved its previous decision in the *Swenson* case.

I concur in the able opinion of Judge McDonald in the *Hanke* case, *supra*, that the decisions of the supreme court in the *Swenson* and *Gazzam* cases are controlling in both the *Hanke* case and the case at bar. (See also *Walker v. Gilman*, 25 Wn. (2d) 557.)

While I find that the picketing here in question was free from violence, threats of violence or interference with any employees of the plaintiff, such picketing, under the *Swenson* and *Gazzam* cases, *supra*, is coercive and subject to injunction.

Findings, conclusions and order granting to the plaintiff a temporary injunction against picketing *pendente lite*, upon the filing by the plaintiff of an approved bond in [fol. 94] the sum of \$1500.00, may be prepared, served and presented for signature and entry.

Dated May 24, 1948.

(Signed) CHESTER A. BATCHELOR.

Judge

[fol. 95] IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR KING COUNTY

{Title omitted}

STIPULATION

BE IT REMEMBERED that following the aforesaid proceedings this cause came on regularly for trial on the merits on the 25th day of June, 1948, before the Honorable Chester A. Batchelor, one of the Judges of the above entitled Court; the plaintiff appearing by C. M. McCune, his attorney; the defendants appearing by Samuel B. Bassett, their attorney; and the trial or further proceedings to be had having been continued on the joint motion of counsel to the 29th day of June, 1948, at 9:30 A.M., at which time the parties, through their counsel, stipulated in open court that the cause be submitted to the court for final judgment on the merits upon the evidence heretofore taken on plaintiff's application for a temporary injunction, and the arguments heretofore submitted; and the plaintiff further stipulated to waive his claim for damages as a result of the picketing complained of. Thereupon the cause was submitted for final judgment as stipulated and the court granted the plaintiff a permanent injunction pursuant to the terms and conditions contained in the temporary injunction heretofore issued.

[fol. 96] IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR KING COUNTY

{Title omitted}

JUDGE'S CERTIFICATE—Filed Aug. 11, 1948

STATE OF WASHINGTON)
COUNTY OF KING)

ss.

I, CHESTER A. BATCHELOR, one of the Judges of the above entitled Court, and the Judge before whom the above entitled and numbered cause was tried, sitting in Department No. 3 thereof, do hereby certify:

That the matters and proceedings contained in the foregoing Statement of Facts are matters and proceedings oc-

curing in said cause, and the same are hereby made a part of the record herein:

I do further certify that the same contains all the material facts, matters and proceedings heretofore occurring in said cause, and not already a part of the record herein.

I do further certify that the foregoing Statement of Facts contains all of the evidence and testimony introduced upon the trial of said cause, together with all objections and exceptions made and taken to the admission or exclusion of [fol. 97] testimony, and all motions, offers to prove, if any, and admissions, and rulings thereon.

I do further certify that Defendants' Exhibits Nos. 1, 2, 3, 4, and Plaintiff's Exhibit No. 5 are all the exhibits admitted upon the trial of said cause.

Done in open court, Counsel for plaintiff and defendants being present and consenting, this 11 day of August, 1948.

CHESTER A. BATCHELOR.

Judge

[FILE ENDORSEMENT OMITTED]

[fol. 98] [CLERK'S CERTIFICATE TO FOREGOING TRANSCRIPT OMITTED IN PRINTING.]

[fol. 99] IN THE SUPREME COURT OF THE UNITED STATES

No.

GEORGE E. CLINE, Respondent

VS.

AUTOMOBILE DRIVERS AND DEMONSTRATORS LOCAL UNION No. 882, RALPH REINERTSEN, its Business Agent, and J. J. ROHAN, its Secretary, Petitioners.

STIPULATION TO OMIT FROM PRINTED RECORD MATTERS NOT ESSENTIAL TO CONSIDERATION OF QUESTIONS PRESENTED

It is hereby stipulated by and between the parties hereto, through their undersigned attorneys of record, that the following documents and papers in the certified transcript of the record may be omitted from the printed record, for

the reason that they are not essential to a consideration of the questions presented by the petition for writ of certiorari:

- (1) Affidavit of George E. Cline
- (2) Order to show cause
- (3) Bond for injunction
- (4) Notice of appeal (to State Supreme Court)
- (5) Bond for costs on appeal
- (6) Motion for order fixing amount of cost bond on application for certiorari
- (7) Order fixing amount of cost bond on application for certiorari
- (8) Bond for costs on application for certiorari
- (9) Stipulation concerning statement of facts and exhibits.
- (10) Order concerning statement of facts and exhibits
- (11) Praecipe for record

Dated at Seattle, Washington, this 16th day of August, 1949

Samuel B. Bassett, Attorney for Petitioners
C. M. McCune, Attorney for Respondent

[fol. 100] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1949

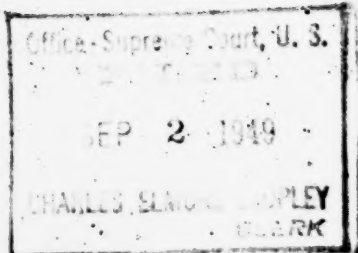
No. 364

ORDER ALLOWING CERTIORARI—Filed December 19, 1949

The petition herein for a writ of certiorari to the Supreme Court of the State of Washington is granted. The case is transferred to the summary docket and assigned for argument immediately following No. 309, International Brotherhood of Teamsters, Chauffeurs, etc., et al. vs. Hanke et al.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Douglas took no part in the consideration or decision of this application.



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 309

**INTERNATIONAL BROTHERHOOD OF TEAM-
STERS, CHAUFFEURS, WAREHOUSEMEN AND
HELPERS UNION, LOCAL 309, DICK KLINGE, ITS
BUSINESS AGENT, AND MEL ANDREWS, ITS SECRETARY,**

Petitioners.

vs.

**A. E. HANKE, L. J. HANKE, R. R. HANKE AND R. M.
HANKE, COPARTNERS DOING BUSINESS UNDER THE NAME
AND STYLE OF ATLAS AUTO REBUILD,**

Respondents

**PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF WASHING-
TON AND BRIEF IN SUPPORT OF PETITION.**

**SAMUEL B. BASSETT,
JOHN GEISNESS,**
Attorneys for Petitioners.

**811 New World Life Building,
Seattle 4, Washington.**

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 309

INTERNATIONAL BROTHERHOOD OF TEAM-
STERS, CHAUFFEURS, WAREHOUSEMEN AND
HELPERS UNION, LOCAL 309, DICK KLINGE, ITS
BUSINESS AGENT, AND MEL ANDREWS, ITS SECRETARY,
Petitioners,

vs.

A. E. HANKE, L. J. HANKE, R. R. HANKE AND R. M.
HANKE, COPARTNERS DOING BUSINESS UNDER THE NAME
AND STYLE OF ATLAS AUTO REBUILD,
Respondents

**PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF WASHING-
TON.**

To the Honorable Supreme Court of the United States:

International Brotherhood of Teamsters, Chauffeurs,
Warehousemen and Helpers Union, Local 309, Dick Klinge
and Mel Andrews, the petitioners herein, pray that a writ
of certiorari be issued to review the final decree of the
Supreme Court of the State of Washington affirming the

decree of the Superior Court of King County, Washington, permanently enjoining the peaceful picketing of respondents' place of business.

Statement of Matter Involved

The case involves the right of a labor union and its officers to picket under the Fourteenth Amendment to the Federal Constitution.

The respondents, a father and three sons, were operating a copartnership business in the City of Seattle, wherein, among other things, they sold used automobiles (R. 41). They had no hired help, but themselves performed all the work in connection with their business (R. 13, 41). One hundred and fifteen other used car dealers in Seattle were bound by a collective bargaining agreement to close their used car lots not later than 6:00 P. M. on all week days and to keep them closed on Saturdays, Sundays and certain specified holidays (R. 13, 74). The respondents sold used cars after 6:00 P. M. and on Saturdays, Sundays and holidays (R. 13, 46). The petitioners, a labor union and its officers peacefully picketed respondents' place of business to persuade them to cease this practice which the union considered detrimental to the welfare of its members (R. 15, 54-55). The picketing was carried on by a single picket who patrolled in front of respondents' premises, bearing a "sandwich" sign upon which was printed in large letters, in both front and rear, the following legend: "Union People Look for (facsimile of Teamsters Union shop card) Union Shop Card" (R. 15, 42, Exh. 2 and 3).

As a result of this picketing respondents' business immediately fell off (R. 15, 45), truck drivers for supply houses refused to deliver parts and materials and in order to obtain the necessary materials respondents were required to call for and transport them in their own truck (R. 15, 42-44).

The trial court specifically found that the "picketing was entirely peaceful, the picket neither threatening nor molesting anyone seeking to enter or leave plaintiffs' (respondents') place of business" (R. 15). (This finding was not overturned by the Supreme Court of Washington). The trial court concluded, however, that there was no "labor dispute" under the laws of the State of Washington (R. 15) and, therefore, the picketing was unlawful, and to enjoin it would not infringe the petitioners' right of freedom of speech as guaranteed by the First and Fourteenth Amendments to the Federal Constitution (R. 16). The decree permanently restrained and enjoined the petitioners from "in any manner picketing the plaintiffs' (respondents') place of business" and awarded respondents damages in the amount of \$250.00 and cost (R. 17). Affirming the decree, three judges dissenting, the Supreme Court of Washington held that the picketing, although peaceful, was, nevertheless, "unlawful" because no member of the petitioning union was employed by the respondents and the purpose of the picketing was to force respondents to conform to union standards, hence the Fourteenth Amendment afforded the petitioners no protection (R. 18-32). Said the Court, in part:

"We do not believe that the United States Supreme Court has ever held that the right of free speech is an absolute right, to be protected regardless of the deleterious effect so produced in regard to other interests also protected by the Federal Constitution; nor do we believe that the United States Supreme Court has ever said that a state is without power to abridge this right where such a course is necessary to protect property rights and is in the general interests of the community (R. 27).

.

In our opinion there is small reason for holding that the appellat union, acting under the guise of protecting the union's freedom of speech, can not be restrained from depriving the respondents of the liberty of lawfully conducting their business in the only manner that it could be profitably conducted.

We are clearly of the opinion that the decree of the trial court in the instant case is not contrary to the provisions of the Constitution of the United States" (R. 31).

Judge Robinson, in his dissenting opinion, said that he was unable to reconcile the view of the majority with the holdings of this Court in *American Federation of Labor v. Swing*, 312 U. S. 321, 85 L. Ed. 855, 61 S. Ct. 568, and *Cafeteria Employees Union, Local 302, v. Angelos*, 320 U. S. 293, 88 L. Ed. 58, 64 S. Ct. 126, and pointed out that in the latter case the owners of the cafeteria as in the instant case, conducted their business themselves without the aid of employees, and the purpose of the picketing was to "organize" the cafeteria (R. 32-35).

Jurisdiction

1. Jurisdiction of this Court is invoked under Title 28, United States Code, Section 1257, which provides, in part:

"Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

(3) By writ of certiorari, . . . where any title, right, privilege or immunity is specially set up or claimed under the Constitution, . . ."

2. The following cases are believed to sustain the jurisdiction of this Court:

American Federation of Labor v. Swing, 312 U. S. 321, 85 L. Ed. 855, 61 S. Ct. 568;

Bakery & Pastry Drivers & Helpers Local 802; etc. v. Wohl, 315 U. S. 769, 86 L. Ed. 1178, 62 S. Ct. 816;
Cafeteria Employees Union, Local 302, v. Angelos, 320 U. S. 293, 88 L. Ed. 58, 64 S. Ct. 126.

3. The Supreme Court of the State of Washington is the highest court of the State.¹

4. The judgment of which review is sought is a final judgment of the Supreme Court of Washington (R. 37-38).

5. The judgment herein sought to be reviewed was filed on July 5, 1949 (R. 37). On the same day the Supreme Court of Washington entered an order staying execution and enforcement of the judgment and fixing the amount of supersedeas and cost bond, to enable your petitioners to apply to this Court for a writ of certiorari (R. 38). The supersedeas and cost bond required was also filed the same day (R. 39).

6. The Federal question of substance which has been decided by the State court is that the constitutional guaranty of freedom of discussion is not infringed by the common law policy of a State which forbids peaceful picketing by labor unions where there is no immediate employer-employee dispute. That decision of the Supreme Court of the State of Washington is squarely in conflict with the decisions of this Court construing the Fourteenth Amendment to the Federal Constitution. (*American Federation of Labor v. Swind*, 312 U. S. 321, 85 L. Ed. 855, 61 S. Ct. 568; *Bakery & Pastry Drivers & Helpers Local 208, etc. v. Wohl*, 315 U. S. 769, 86 L. Ed. 1178, 62 S. Ct. 816; *Cafeteria Employees Union, Local 302 v. Angelos*, 320 U. S. 293, 88 L. Ed. 58, 64 S. Ct. 126).

7. The Federal question was timely raised and considered. Upon the commencement of the action the Su-

¹ State Constitution, Article IV, Sections 1 and 4, Remington's Revised Statutes of Washington, Volume 1.

perior Court of King County, without notice, issued an order temporarily restraining the petitioners from all picketing and requiring them to show cause why the restraining order should not be continued in force *pendente lite* (R. 5). The petitioners immediately filed a motion to dissolve this temporary restraining order, specifically claiming the protection of the First and Fourteenth Amendments to the Constitution as follows:

"The above named defendants (petitioners) move the court for an order dissolving the temporary restraining order which was issued herein on the 24th day of February, 1948, on the ground and for the reason that the advertising thereby restrained deprives said defendants of their right of freedom of speech guaranteed by the First and Fourteenth Amendments to the Constitution of the United States" (R. 6).

Following a hearing on this motion and the respondents' application for an injunction *pendente-lite* that court filed a memorandum decision (R. 90, 97-101) in which it passed upon the constitutional question, denied petitioners' motion and, accordingly, made findings of fact and conclusions of law, which also ruled upon the petitioners' claimed right under the Federal Constitution, in the following language:

"That said picketing was coercive and, therefore, an injunction forbidding the same would not infringe the defendants' right of freedom of speech guaranteed by the First and Fourteenth Amendments to the Constitution of the United States" (R. 16).

Thereafter, the cause having come on regularly for trial on the merits before the same judge, the parties, through their counsel, stipulated that the cause be submitted to the court for final judgment on the merits, based on the evidence already taken and the arguments submitted; and further stipulated that respondents have sustained damages in the

amount of \$250.00 as a result of the picketing complained of (R. 104). Thereafter the court, having reconsidered the evidence and arguments presented, made and entered a final decree permanently enjoining the petitioners from "in any manner picketing" the respondents' place of business and awarding respondents judgment for damages in the amount of \$250.00 (R. 17).

The Supreme Court of Washington, in affirming the trial court's decree, likewise passed upon the petitioners' claimed constitutional right, saying:

"The controlling question involved in this appeal is whether or not, under the facts of the instant case, the granting of injunctive relief by the trial court against the appellant union and its representatives violates the provisions of the Federal Constitution forbidding the abridgment of freedom of speech (R. 23) * * *. The decisions which appellants cite and on which they rely as supporting their contention are the following: *Scun v. Tile Layers Protective Union, Local No. 5*, 301 U. S. 468, 81 L. Ed. 1229, 57 S. Ct. 857; *Thornhill v. Alabama*, 310 U. S. 88, 84 L. Ed. 1093, 60 S. Ct. 736; *American Federation of Labor v. Swing*, 312 U. S. 321, 85 L. Ed. 855, 61 S. Ct. 568; *Bakery & Pastry Drivers & Helpers Local 802, etc. v. Wohl*, 315 U. S. 769, 86 L. Ed. 1178, 62 S. Ct. 816; *Cafeteria Employees Union, Local 302 v. Angelos*, 320 U. S. 293, 88 L. Ed. 58, 64 S. Ct. 126" (R. 26-27).

and concluding:

"We are clearly of the opinion that the decree of the trial court in the instant case is not contrary to the provisions of the Constitution of the United States" (R. 31).

The Question Presented

Is the constitutional guaranty of freedom of communication infringed by the common law policy of a State forbid-

ding peaceful picketing by a labor union where there is no immediate employer-employee dispute?

Reasons Relied On for the Allowance of the Writ

The Supreme Court of Washington has decided an important question arising under the First and Fourteenth Amendments to the Constitution of the United States, involving the right of labor unions to make known, through peaceful picketing, the facts of a labor dispute, in a way probably untenable and in conflict with the applicable decisions of this Court in the following cases:

Senn v. Tile Layers Protective Union, 301 U. S. 468, 81 L. Ed. 1229, 57 S. Ct. 857;

Thornhill v. Alabama, 310 U. S. 88, 84 L. Ed. 1093, 60 S. Ct. 736;

Carlson v. California, 310 U. S. 106, 84 L. Ed. 1104, 60 S. Ct. 746;

American Federation of Labor v. Swing, 312 U. S. 321, 85 L. Ed. 855, 61 S. Ct. 568;

Bakery & Pastry Drivers & Helpers, Local 802 v. Wohl, 315 U. S. 769, 86 L. Ed. 1178, 62 S. Ct. 816;

Cafeteria Employees Union v. Angelos, 320 U. S. 293, 88 L. Ed. 58, 64 S. Ct. 126.

The Supreme Court of Washington has held that peaceful picketing by a labor union is "unlawful" where there is no immediate employer-employee dispute and, being thus unlawful, is not protected by the Fourteenth Amendment. This holding is directly in conflict with the decisions of this Court in *American Federation of Labor v. Swing*, *Bakery & Pastry Drivers & Helpers v. Wohl*, and *Cafeteria Employees Union v. Angelos*, *supra*. The Supreme Court of Washington says:

"* * * peaceful picketing of an employer's place of business is not protected by the constitutional guar-

anty of free speech and is unlawful, where the employees are not members of the picketing union and the purpose of the picketing is to force the employees to join the union or to compel the employer to enter into a contract which would, in effect, compel his employees to become members of the union" (R. 26).

In *American Federation of Labor v. Swing*, *supra*, this Court said:

"We are asked to sustain a decree which for purposes of this case asserts as the common law of a state that there can be no 'peaceful picketing or peaceful persuasion' in relation to any dispute between an employer and a trade union unless the employer's own employees are in controversy with him.

Such a ban of free communication is inconsistent with the guaranty of freedom of speech. * * * The scope of the Fourteenth Amendment is not confined by the notion of a particular state regarding the wise limits of an injunction in an industrial dispute, whether those limits be defined by statute or by the judicial organ of the state. A state can not exclude workingmen from peacefully exercising the right of free communication by drawing the circle of economic competition between employers and workers so small as to contain only an employer and those directly employed by him. The interdependence of economic interest of all engaged in the same industry has become a commonplace. *American Steel Foundries v. Tri-City Central Trades Council*, 257 U. S. 184, 209. The right of free communication can not therefore be mutilated by denying it to workers, in a dispute with an employer, even though they are not in his employ. * * *

The decree of the Supreme Court of Washington manifestly deprives the petitioners of the right to make known the facts of the dispute between them and respondents, through peaceful picketing; *solely because respondents employ no one in the operation of their copartnership business*

But this was the precise factual situation in *Bakery & Pastry Drivers & Helpers Local 802, etc. v. Wohl*, 315 U. S. 769, 86 L. Ed. 1178, 62 S. Ct. 816, *supra*, and in *Cafeteria Employees Union, Local 302 v. Angelos*, 320 U. S. 293, 88 L. Ed. 58, 64 S. Ct. 126, *supra*, and this Court in each of these cases applied the doctrine of the *Swing* case, in the *Wohl* case saying:

“ * * * One need not be in a ‘labor dispute’ as defined by state law to have a right under the Fourteenth Amendment to exercise a grievance in a labor matter by publication unattended by violence, coercion, or conduct otherwise unlawful or oppressive” (page 774).

and in the *Angelos* case:

“But, as we have heretofore decided, a state can not exclude workingmen in a particular industry from putting their case to the public in a peaceful way ‘by drawing the circle of economic competition between employers and workers so small as to contain only an employer and those directly employed by him,’” (page 296).

Your petitioners respectfully submit that the writ of certiorari should issue to the end that this Court may review the decision of the Supreme Court of Washington and determine whether that court has deprived petitioners of rights guaranteed by the Fourteenth Amendment to the Federal Constitution.

SAMUEL B. BASSETT,
JOHN GEISNESS,
Attorneys for Petitioners.

STATE OF WASHINGTON,
County of King, ss:

Samuel B. Bassett, being first duly sworn, on oath deposes and says: That he is one of the attorneys for the petitioners herein; that he has read the foregoing petition and

knows the contents thereof, and that the same is true to the best of his knowledge and belief, except as to matters therein stated to be alleged upon information and belief, and as to those matters he believes the same to be true.

SAMUEL B. BASSETT.

Subscribed and sworn to before me this 18th day of August, 1949.

[SEAL.]

JOHN GEISNESS,
*Notary Public in and for the
State of Washington, Residing at Seattle.*

I hereby certify that I have examined the foregoing petition, and that in my opinion it is well founded in law as well as in fact and not interposed for delay, and that the case is one in which the prayer of the petitioners should be granted.

SAMUEL B. BASSETT,
Attorney for Petitioners.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 309

INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN AND HELPERS
UNION, LOCAL 309, DICK KLINGE, ITS BUSINESS
AGENT, AND MEL ANDREWS, ITS SECRETARY,

Petitioners,

vs.

A. E. HANKE, L. J. HANKE, R. R. HANKE AND R. M.
HANKE, COPARTNERS DOING BUSINESS UNDER THE NAME
AND STYLE OF ATLAS AUTO REBUILD,

Respondents

**BRIEF IN SUPPORT OF PETITION FOR WRIT OF
CERTIORARI TO THE SUPREME COURT OF THE
STATE OF WASHINGTON.**

I

Opinion of the Court Below

The opinion of the Supreme Court of the State of Washington is reported in Volume 133 Washington Decisions 625; 207 P. (2d) 206 (R. 18).

II

Jurisdiction

Jurisdiction is fully covered in the foregoing petition and the statement there made is adopted here by reference.

III

Statement of the Case

A concise statement of the case is set forth in the foregoing petition under the heading "SUMMARY OF MATTER INVOLVED" and, in the interest of brevity, is adopted here by reference.

The other facts relating to the dispute between petitioners and respondents, which we do not consider as controlling, but which were mentioned in the opinions of the courts below, are the following:

The respondents purchased the business in question in June, 1946, at which time it included a gasoline station and a shop for the repair and rebuilding of automobiles (R. 11). Shortly thereafter they added to their business the purchase and sale of used cars (R. 13). The parties from whom the respondents acquired the original business had, during their term of operation, kept on display in a window of the establishment a union shop card issued to them by the petitioning union (R. 11-12). This shop card was made up of a metal sign 11 x 7 inches in size, bearing the insignia of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America and stating that "Union Service" was to be had at that establishment (R. 12; Exhibit 1).

When the respondents purchased the business A. E. Hanke, the father of the other three respondents, joined the union (R. 12), and for this reason respondents were

allowed to retain this shop card which they kept on display until this dispute arose (R. 12, 14). On January 27, 1948, when respondents refused to adopt and keep union hours in the sale of used cars, the union removed the shop card and A. E. Hanke thereupon withdrew from the union (R. 14, 61, 65).

The picketing commenced on January 12, 1948, and continued until enjoined by the court on February 24, 1948 (R. 15). The union shop card which was attached to the sign carried by the picket was identical in size, form and legend with that which had been on display in respondents' window (R. 47, 64). The picket talked to respondents' customers (R. 15, 55), but the record does not disclose what he said. He also took down the motor vehicle license numbers of their customers (R. 15).

The respondents enjoyed considerable patronage of members of labor unions (R. 54). Immediately following the picketing respondents' business fell off (R. 15, 45, 54).

The trial court found:

"That in addition to the use and benefit of said shop card the plaintiffs, during all of the time they operated said business, enjoyed the benefit of advertisements which the defendant Union caused to be printed in 'THE WASHINGTON TEAMSTER'—the official publication of the Teamsters Union, which is published weekly and distributed to all of the members of the International Brotherhood of Teamsters throughout the State of Washington, and that as a result of the use of said shop card and of said advertising the plaintiffs received a substantial amount of the Union patronage which they otherwise would not have received." (Emphasis ours.) (R. 12).

And these findings were not disturbed by the State Supreme Court.

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IV

Specifications of Error

1. The State Supreme Court erred in holding that the injunction does not deprive petitioners of the right of freedom of speech guaranteed by the Fourteenth Amendment.

2. The State Supreme Court erred in holding that the constitutional guaranty of freedom of speech is not infringed by the judicial policy of the state which forbids peaceful picketing where there is no immediate employer-employee dispute.

V

Summary of Argument

A. The decree permanently enjoining the petitioners "from in any manner picketing" respondents' place of business deprives them of the right of freedom of discussion and communication guaranteed by the Fourteenth Amendment.

B. The constitutional guaranty of freedom of discussion and communication is infringed by the judicial policy of the State of Washington which forbids peaceful picketing by workingmen where there is no immediate employer-employee dispute.

VI

ARGUMENT

A. The Decree Permanently Enjoining the Petitioners "from in Any Manner Picketing" Respondents' Place of Business Deprives Them of the Right of Freedom of Discussion and Communication Guaranteed by the Fourteenth Amendment.

• The picketing enjoined by the decree was admittedly peaceful and free from physical coercion or intimidation and

was conducted for the purpose of inducing the respondents to conduct their used car business in conformity with the established union standards relating to hours and days of work. The Supreme Court of Washington (three judges dissenting) held, however, that the picketing was "unlawful" under the common law of the State because

(1) At the time the picketing was started by petitioners the respondents had no hired help, but themselves did all the work connected with the operation of their business;

(2) No member of respondents' partnership was a member of the union conducting the picketing;

(3) Respondents had no agreement with any union concerning the manner in which their business was to be conducted. Hence, the court concluded that the injunction did not deprive petitioners of the right of freedom of discussion and communication guaranteed by the Fourteenth Amendment, saying:

"In our opinion, there is small reason for holding that the appellant union, acting under the guise of protecting the union's freedom of speech, can not be restrained from depriving respondents of the liberty of lawfully conducting their business in the only manner that it could be profitably conducted.

We are clearly of the opinion that the decree of the trial court in the instant case is not contrary to the provisions of the Constitution of the United States."

This holding and the reasoning which influenced the Supreme Court of Washington to so hold, we submit, is in conflict with that of this Court in *Senn v. Tile Layers Protective Union*, 301 U. S. 468, 81 L. Ed. 1229, 57 S. Ct. 857. Senn conducted a small business employing one or two journeymen tile layers and one or two helpers, depending upon the amount of work he had contracted to do at the

time. He also worked with the tools of the trade. Neither he nor any of his employees was a member of the union and neither had any contractual relations with the union. The picketing was conducted for the purpose of inducing Senn to unionize his business and execute a union contract. This Court ruled:

"Members of a union might, without special statutory authorization by a State, make known the facts of a labor dispute, for freedom of speech is guaranteed by the Federal Constitution." (Emphasis supplied)

And the reasoning of the Court (Mr. Justice Brandeis speaking) was:

"The sole purpose of the picketing was to acquaint the public with the facts and, by gaining its support, to induce Senn to unionize his shop. There was no effort to induce Senn to do an unlawful thing. There was no violence, no force was applied, no molestation or interference, no coercion. There was only the persuasion incident to publicity. . . .

The unions acted, and had the right to act, as they did, to protect the interests of their members against the harmful effect upon them of Senn's action. Compare *American Steel Foundries v. Tri-City Central Trades Council, supra*, (257 U. S. 208, 209). Because his action was harmful, the fact that none of Senn's employees was a union member, or sought the union's aid, is immaterial. . . .

There is nothing in the Federal Constitution which forbids unions from competing with non-union concerns for customers by means of picketing as freely as one merchant competes with another by means of advertisements in the press, by circulars, or by his window display. Each member of the unions, as well as Senn, has the right to strive to earn his living. Senn seeks to do so through exercise of his individual skill and planning. The union members seek to do so through combination. Earning a living is dependent

upon public favor. To win the patronage of the public each may strive by legal means. * * * It is true that disclosure of the facts of the labor dispute may be annoying to Senn even if the method and means employed in giving the publicity are inherently unobjectionable. But such annoyance like that often suffered from publicity in other connections, is not an invasion of the liberty guaranteed by the Constitution. Compare *Pennsylvania R. Co. v. United States R. Labor Bd.*, 261 U. S. 72. It is true, also, that disclosure of the facts may prevent Senn from securing jobs which he hoped to get. But a hoped-for job is not property guaranteed by the Constitution. And the diversion of it to a competitor is not an invasion of a constitutional right."

In the instant case the respondents, during all the time they operated their business, enjoyed the use and benefit of the union shop card and the advertising which the union gave their business in the union's weekly publication and, as the trial court found, as a result they received a substantial amount of union patronage which otherwise they would not have obtained (R. 12). Before picketing, the union attempted to induce respondents to observe the union's established hours and days of work in the used car industry, telling them that unless they did agree so to do, the shop card would be withdrawn, the union advertising would cease and their business henceforth would be advertised as non-union (R. 14, 53-54, 61). Under these circumstances, when respondents refused to operate a union shop, the union was justified in resorting to picketing for the purpose of informing union people and the public at large that respondents were no longer operating a union shop. And if, as a result, they lost union patronage the courts should not by injunction attempt to restore and maintain it. The sandwich sign which the picket carried merely asked "Union People Look for the Union Shop Card."

This Court, applying the principles of the *Senn* case, has repeatedly held that such appeal to public opinion through peaceful picketing is protected by the Fourteenth Amendment.

American Federation of Labor v. Swing, 312 U. S. 321, 85 L. Ed. 855, 61 S. Ct. 568;

Bakery & Pastry Drivers & Helpers Local 802, etc. v. Wohl, 315 U. S. 769, 86 L. Ed. 1178, 62 S. Ct. 816;

Cafeteria Employees Union, Local 302, v. Angelos, 320 U. S. 293, 88 L. Ed. 58, 62 S. Ct. 126.

In *American Federation of Labor v. Swing*, *supra*, the Court said:

"We are asked to sustain a decree which for purposes of this case asserts as the common law of a State that there can be no 'peaceful picketing or peaceful persuasion' in relation to any dispute between an employer and a trade union unless the employer's own employees are in controversy with him.

Such a ban of free communication is inconsistent with the guaranty of freedom of speech." (Emphasis supplied.)

The decree which the Supreme Court of Washington affirmed was as unrestricted as that in the *Swing* case. It enjoined all picketing and in so doing deprived petitioners of freedom of speech.

B. The Constitutional Guaranty of Freedom of Discussion and Communication Is Infringed by the Judicial Policy of the State of Washington Which Forbids Peaceful Picketing by Workingmen Where There Is No Immediate Employer-Employee Dispute.

Before this Court decided *American Federation of Labor v. Swing*, *supra*, the Supreme Court of Washington had established, in a long line of decisions commencing in 1935

(some of which are: *Safeway Stores v. Retail Clerks' Union, Local No. 148*, (1935), 184 Wash. 322, 51 P. (2d) 372; *Adams v. Building Service Employees International Union, Local No. 6* (1938), 197 Wash. 242, 84 P. (2d) 1021; *Fornili v. Auto Mechanics' Union, Local No. 297* (1939), 200 Wash. 283, 93 P. (2d) 422; *Shively v. Garage Employees Local Union No. 44* (1940), 6 Wn. (2d) 560, 107 P. (2d) 354), a judicial policy which forbids peaceful picketing by labor unions in the absence of an immediate employer-employee dispute.

The first case which came before the Supreme Court of Washington, involving the right to peacefully picket, after *American Federation of Labor v. Swing*, was *O'Neil v. Building Service Employees International Union, Local No. 6* (1941), 9 Wn. (2d) 507, 115 P. (2d) 662. In that case the plaintiff operated two apartment houses with the assistance of her family and without the help of outside employees. The union peacefully picketed the apartment houses in an effort to induce the plaintiff to join the union. Although there was no immediate employer-employee dispute the court, as then constituted, four judges dissenting, held, on the authority of *American Federation of Labor v. Swing, supra*, that the peaceful picketing of plaintiff's apartment houses could not be enjoined in view of the Fourteenth Amendment, saying in part:

"The Constitution of the United States is the supreme law of the land. However much we may disagree with the interpretation of that Constitution by the United States Supreme Court, such interpretation is binding on us."

The next case which came before the Washington Supreme Court, involving the right to picket, was *S & W Fine Foods v. Retail Delivery Drivers & Salesmen's Union, Local 353* (1941), 41 Wn. (2d) 262, 418 P. (2d) 962. The union in

that case picketed the plaintiff's warehouse because its salesmen, who were satisfied with their wages, hours and working conditions, had refused to join the union. The court again, one judge dissenting, on the authority of *American Federation of Labor v. Swing*, *supra*, held that the right to peacefully picket was protected by the Fourteenth Amendment. This seemed to be the settled law of the State of Washington until December 22, 1947, when the Supreme Court of Washington handed down its decision in *Gazzam v. Building Service Employees International Union, Local 262*, et al., 29 Wn. (2d) 488, 188 P. (2d) 97. In that case the court, as then constituted, four judges dissenting, held that the peaceful picketing of an employer's place of business is not protected by the constitutional guaranty of free speech and is unlawful, where the employees are not members of the picketing union and the purpose of the picketing is to organize them. And in so holding the court expressly overruled its two preceding decisions which had adopted the rule of *American Federation of Labor v. Swing*.

The decree in the case at bar is affirmed on the authority of the *Gazzam* case, concerning which the majority opinion says:

"The factual situation in the case before us bears a close resemblance to that which obtained in the recent case of *Gazzam v. Building Service Employees International Union, Local 262*, reported in 29 Wn. (2d) 488, 188 P. (2d) 97. In fact, it seems to be agreed between the parties herein that, unless that case be now overruled, it is controlling of the case at bar. . . .

After analysis and discussion of the cases above cited, this court, in the *Gazzam* case, *supra*, expressly overruled the *O'Neil* and *S & W Fine Foods* cases, *supra*, as being wrong in principle and contrary to the most recent view of a majority of the court. . . .

We now find and here declare that the picketing activity conducted by Local 309 . . . constituted co-

ercion and was therefore unlawful. This conclusion is the view of the majority of this court as presently constituted, and therefore, without further comment thereon, we decline to overrule the *Gazzam* case, *supra*.²

Thus the Supreme Court of Washington has in effect, ruled that the judicial policy of the State which forbids peaceful picketing where there is no immediate employer-employee dispute does not abridge the Fourteenth Amendment, and this holding is directly in conflict with the decisions of this Court in the *Swing*, *Wohl* and *Angelos* cases, *supra*.

In the *Swing* case this Court said:

"More thorough study of the record and full argument have reduced the issue to this: is the constitutional guaranty of freedom of discussion infringed by the common law policy of a state forbidding resort to peaceful persuasion through picketing merely, because there is no immediate employer-employee dispute?"

Answering this question, the Court said:

"All that we have before us, then, is an instance of 'peaceful persuasion' disentangled from violence and free from 'picketing en masse or otherwise conducted' so as to occasion 'imminent and aggravated danger.' *Thornhill v. Alabama*, 210 U. S. 88, 105, 84 L. ed. 1093, 1104, 60 S. Ct. 736. We are asked to sustain a decree which for purposes of this case asserts as the common law of a state that there can be no 'peaceful picketing or peaceful persuasion' in relation to any dispute between an employer and a trade union unless the employer's own employees are in controversy with him.

Such a ban of free communication is inconsistent with the guaranty of freedom of speech. That a state has

² On August 5, 1949, the court (Vol. 134, Washington Decisions 34) following a second appeal, entered a final judgment in the *Gazzam* case and we understand that the union has taken steps to petition this Court for a writ of certiorari.

ample power to regulate the local problems thrown up by modern industry and to preserve the peace is axiomatic. But not even these essential powers are unfettered by the requirements of the Bill of Rights. The scope of the Fourteenth Amendment is not confined by the notion of a particular state regarding the wise limits of an injunction in an industrial dispute, whether those limits be defined by statute or by the judicial organ of the state. A state cannot exclude workmen from peacefully exercising the right of free communication by drawing the circle of economic competition between employers and workers so small as to contain only an employer and those directly employed by him. The interdependence of economic interest of all engaged in the same industry has become a commonplace. *American Steel Foundries v. Tri-City Central Trades Council*, 257 U. S. 184, 209, 66 L. ed. 189, 199, 42 S. Ct. 72, 27 ALR 360. The right of free communication cannot therefore be mutilated by denying it to workers, in a dispute with an employer, even though they are not in his employ. Communication by such employees of the facts of a dispute, deemed by them to be relevant to their interests, can no more be barred because of concern for the economic interests against which they are seeking to enlist public opinion than could the utterance protected in *Thornhill's case*."

In the *Wohl* case this Court, reversing the judgment of the court of Appeals of New York, holding that there was no "labor dispute" within the meaning of the statutes of New York because the respondents employed no one to assist them in conducting their business, said:

"So far as we can ascertain from the opinions delivered by the state courts in this case, those courts were concerned only with the question whether there was involved a labor dispute within the meaning of the New York statutes and assumed that the legality of the injunction followed from a determination that such a dispute was not involved. Of course that does not

follow: one need not be in a 'labor dispute' as defined by state law to have a right under the Fourteenth Amendment to express a grievance in a labor matter by publication unattended by violence, coercion, or conduct otherwise unlawful or oppressive."

In the *Angelos* case the plaintiff and his copartners operated a cafeteria, themselves performing all the work pertaining to their business without the assistance of others. The union picketed the cafeteria "in an attempt to organize it." Again reversing the Court of Appeals of New York, which had enjoined the picketing, this Court said:

"In *Senn v. Tile Layers Protective Union*, 301 U. S. 468, 81 L. ed. 1229, 57 S. Ct. 857, this Court ruled that members of a union might, 'without special statutory authorization by a State, make known the facts of a labor dispute, for freedom of speech is guaranteed by the Federal Constitution.' 301 U. S. at 478, 81 L. ed. 1236, 57 S. Ct. 857. Later cases applied the Senn Doctrine by enforcing the right of workers to state their case and to appeal for public support in an orderly and peaceful manner regardless of the area of immunity as defined by state policy. *American Federation of Labor v. Swing*, 312 U. S. 321, 85 L. ed. 855, 61 S. Ct. 568; *Bakery & P. Drivers & Helpers, I.B.T. v. Wohl*, 315 U. S. 769, 86 L. ed. 1178, 62 S. Ct. 816. To be sure the Senn Case related to the employment of 'peaceful picketing and truthful publicity.' 301 U. S. at 482, 81 L. ed. 1238, 57 S. Ct. 857. That the picketing under review was peaceful is not questioned. * * * We have before us a prohibition as unrestricted as that which we found to transgress state power in *American Federation of Labor v. Swing*, 312 U. S. 321, 85 L. ed. 855, 61 S. Ct. 568, supra. The Court here, as in the *Swing* Case, was probably led into error by assuming that if a controversy does not come within the scope of state legislation limiting the issue of injunctions, efforts to make known one side of an industrial controversy by peaceful means may be enjoined. But, as we have

heretofore decided, a state cannot exclude working men in a particular industry from putting their case to the public in a peaceful way 'by drawing the circle of economic competition between employers and workers so small as to contain only an employer and those directly employed by him.' American Federation of Labor v. Swing, 312 U. S. at 326, 85 L. ed 857, 61 S. Ct. 568."

Respectfully submitted,

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Supreme Court of the United States

OCTOBER TERM, 1949

No. 309

INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN AND HELPERS
UNION, LOCAL 309, *et al.*, *Petitioners*,
VS.

A. E. HANKE, L. J. HANKE, R. R. HANKE, AND
R. M. HANKE, COPARTNERS, D. B. A. ATLAS
AUTO REBUILD, *Respondents*.

ON CERTIORARI TO THE SUPREME COURT OF THE
STATE OF WASHINGTON

REPLY BRIEF OF PETITIONERS

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CONSTITUTION*Pa*

United States Constitution:

First Amendment5

Fourteenth Amendment5,

v

PREFATORY STATEMENT

Respondents' briefs in this case and in the *Cline* case (No. 364) were both served January 26, 1950. Because both cases have been assigned by the Court for hearing during the week of February 6, 1950, sufficient time is not available to the undersigned (who will argue both cases for petitioners) for travel and in which to prepare and have printed a complete reply brief in both cases. For this reason we respectfully request that Parts I and II of the Reply Brief in the *Cline* case be considered as a part of this reply brief.

1

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ON CERTIORARI TO THE SUPREME COURT OF THE
STATE OF WASHINGTON

REPLY BRIEF OF PETITIONER

I.

OPINIONS OF THE COURT BELOW

The majority opinion of the Supreme Court of the State of Washington is reported in Volume 133 Washington Decisions 625; 207 P.(2d) 206 (R. 18); the dissenting opinion of Judge Robinson (R. 32); and the concurring opinion of Judge Grady (R. 36).

II.

FACTUAL INACCURACIES IN RESPONDENTS' BRIEF

(1) On page 2 of their brief respondents say "No one of them belonged to any union * * *." The trial court found, however, (Finding No. IV, R. 12): "* * *

That upon purchasing said business the plaintiff A. E. Hanke became a member of the defendant Union * * *." Again in his memorandum decision (R. 93) the trial judge said: "On June 22, 1946, he (A. E. Hanke) had joined the defendant Union." And this finding is sustained by A. E. Hanke's own testimony (R. 82):

"Q When did you join the Teamsters Union, 309?

A We took that over on the 15th of June; it must have been somewhere in the latter part of June or the first of July.

Q (THE COURT): In 1946?

A Yes, in 1946."

Furthermore, the Washington Supreme Court concurred in this finding (R. 20).

The proof also shows, without dispute, that A. E. Hanke continued to be a member of the petitioning Union until January 27, 1948, when this controversy arose, and the trial court so found (Finding of Fact IV, R. 12).

(2) At page 3 of their brief the respondents say that the Union's representatives told them they would have to remove the Union's shop card "*unless at least one of the respondents joined the Union or unless they signed up the agreement to abide by Union rules and regulations in regard to hours and days of labor* (R. 14)." The reference to the record which respondents give in support of this assertion states the very contrary. Page 14 of the record contains the trial court's Finding of Fact No. VIII, which says, in part:

"That on the 27th day of January, 1948, the defendant Dick Klinge and one E. W. Marshall,

who was the business agent for Teamsters Local No. 882, (the Automobile Salesmen's Union) having had complaints against the plaintiffs for violation in regard to the hours referred to in the agreement between the Dealers and said Local No. 882, went to the place of business of the plaintiffs and there conferred with all four of the partners. *They did not insist on the plaintiffs becoming members of said Local 882 or the defendant Local No. 309, but merely protested as to their violation of the clause of the agreement above quoted.* (Emphasis supplied)

And again this is sustained by respondent A. E. Hanke's own testimony (R. 82):

"Q And the chief thing he (Union representative) was doing was to ask you to conform to those regulations for opening and closing?

A That is what they said about that.

* * * * *

"Q They didn't complain about anything else, did they?

A No."

In his memorandum decision the trial court summarized what occurred at this interview with the four respondents as follows:

"On the 27th day of January, 1948, Mr. Klinge and a Mr. E. W. Marshall, who was the business agent for Local No. 882, having had complaints against the plaintiffs for violation in regard to the hours referred to in the agreement between the Dealers and Local 882, went to the place of business of plaintiffs and there conferred with all four of the partners. It does not appear that they insisted on the plaintiffs becoming members of Local 882 or Local No. 309, but merely protested

as to their violation of the clause of the agreement heretofore referred to. * * *.

"The main topic of conversation seemed to be that the agents of the Unions would have to take down the shop card on display in the plaintiffs' shop unless they agreed to abide by the provisions in the agreement between the Dealers and the Union as to the working hours. * * *.

"No threats appear to have been made by the agents of the Union to the plaintiffs. All they said was that unless they would keep the hours they would have to take down the Union shop card."
(R. 94-95)

The substance of this is also set out in the opinion of the Supreme Court (R. 22).

Thus it conclusively appears from the record

(1) That when this controversy arose one of respondents was a member of petitioning Union and had been such member for approximately eighteen months.

(2) That neither the petitioning Union nor its sister Union, Local No. 882, requested any of the respondents to join either Union, but merely asked that they abide by the provisions of the collective bargaining agreement which the Union had with other automobile dealers in the Seattle area, *as to working days and hours.*

III.

ARGUMENT

THE PICKETING WAS FOR A LAWFUL PURPOSE

The purpose of the picketing under review was to inform Union members and their friends that respondents were no longer operating a union shop, thereby depriving respondents of this patronage, in order to induce them not to sell used cars on Saturdays, Sundays, holidays or after 6:00 P.M. This was a legitimate union objective. The respondents were operating their business in a way deemed by the Union harmful to its members. The right to so publicize the facts of such dispute is guaranteed by the First and Fourteenth Amendments to the Constitution.

Senn v. Tile Layers Protective Union, 301 U.S. 468, 81 L. Ed. 1229, 57 S. Ct. 857;

Thornhill v. Alabama, 310 U.S. 88, 84 L. Ed. 1093, 60 S. Ct. 736.

The fact that respondents employed no member of the Union did not make the picketing unlawful so as to put it beyond the protection of the Fourteenth Amendment, as was held by the majority of the Washington Supreme court.

American Federation of Labor v. Swing, 312 U.S. 321, 85 L. Ed. 855, 61 S. Ct. 568;

Bakery & Pastry Drivers & Helpers Local 802 v. Wohl, 315 U.S. 769, 86 L. Ed. 1178, 62 S. Ct. 816;

Cafeteria Employees Union Local 302 v. Angelos, 320 U.S. 293, 88 L. Ed. 58, 64 S. Ct. 126.

The Washington supreme court in the majority opinion said:

"* * *; nor do we believe that the United States supreme court has ever said that a state is without power to abridge this right (free speech) *where such a course is necessary to protect property rights* and is in the general interests of the community." (Emphasis supplied) (R. 27).

The judges who joined in that opinion apparently have not carefully read the decision of this Court in the *Swing Case, supra*, in which this Court said:

"Communication by such employees of the facts of a dispute, deemed by them to be relevant to their interests, can no more be barred because of concern for the economic interests against which they are seeking to enlist public opinion than could the utterance protected in *Thornhill's Case*." (312 U.S. 321, 326)

In *Thornhill's Case, supra*, the Court had previously said, in part:

"It is true that the rights of employers and employees to conduct their economic affairs and to compete with others for a share in the products of industry are subject to modification or qualification in the interests of the society in which they exist. This is but an instance of the power of the State to set the limits of permissible content open to industrial combatants. See Mr. Justice Brandeis in *Duplex Printing Co. v. Deering*, 254 U.S. 443, at 488, 65 L. Ed. 349, 365, 41 S. Ct. 172, 16 A.L.R. 196. It does not follow that the State in dealing with the evils arising from industrial disputes may impair the effective exercise of the right to discuss freely industrial relations which are matters of public concern. A

contrary conclusion could be used to support abridgment of freedom of speech and of the press concerning almost every matter of importance to society.

" * * It may be that effective exercise of the means of advancing public knowledge may persuade some of those reached to refrain from entering into advantageous relations with the business establishment which is the scene of the dispute. Every expression of opinion on matters that are important has the potentiality of inducing action in the interests of one rather than another group of society. But the group in power at any moment may not impose penal sanctions on peaceful and truthful discussion of matters of public interest merely on a showing that others may thereby be persuaded to take action inconsistent with its interests. Abridgment of the liberty of such discussion can be justified only where the clear danger of substantive evils arises under circumstances affording no opportunity to test the merits of ideas by competition for acceptance in the market of public opinion. We hold that the danger of injury to an industrial concern is neither so serious nor so imminent as to justify the sweeping proscription of freedom of discussion embodied in Section 3448." (Emphasis supplied)*

And before *Thornhill's* case, in *Senn's* case, Justice Brandeis, speaking for the Court, had said, concerning this matter:

"The sole purpose of the picketing was to acquaint the public with the facts and, by gaining its support to induce Senn to unionize his shop. (301 U.S. 468, 480) * * *"

"It is true that disclosure of the facts of the

labor dispute may be annoying to Senn even if the method and means employed in giving the publicity are inherently unobjectionable. But such annoyance like that often suffered from publicity in other connections, is not an invasion of the liberty guaranteed by the Constitution. * * * It is true, also, that disclosure of the facts may prevent Senn from securing jobs which he hoped to get. But a hoped-for job is not property guaranteed by the Constitution. And the diversion of it to a competitor is not an invasion of a constitutional right." (301 U.S. 482)

Shively v. Garage Employees Local Union No. 44, 6 Wn.(2d) 560, 108 P.(2d) 354, cited and discussed in the majority opinion (R. 27), was decided a few days before this Court rendered its decision in *American Federation of Labor v. Swing*, *supra*. The Washington court there, holding that picketing was unlawful in the absence of any employer-employee relationship, relied upon the decision of the Court below in the *Swing* case. In the course of the opinion in the *Shively* case the Washington supreme court, in denying the union's claimed right to peacefully picket under the Fourteenth Amendment, said at page 570:

"It is for this state to determine, under the exercise of its police powers, what conduct of its citizens shall be lawful and what shall not be. Of course, the state may not declare unlawful that which the constitution of the United States, as interpreted by the supreme court of the United States, has expressly made lawful. However, so far as we have been able to determine, on no occasion has the supreme court of the United States held that the state courts may not enjoin a labor union from engaging in unlawful picket-

ing (unlawful under the laws and decisions of that state) because of any inhibition to be found in the fourteenth amendment." (Emphasis supplied)

The Supreme Court of Washington has now done in this case and in the *Gazzam* and *Cline* cases precisely what it previously had said it may not do—it has declared "unlawful" that which the Constitution of the United States, as interpreted by this Court, has expressly made lawful.

IV.

PUBLIC POLICY

The respondents now urge for the first time that the picketing was unlawful because it violated the declaration of public policy in the Washington anti-injunction statute. (Rem. Rev. Stat. (Supp.) 7612-2, quoted at page 4 of respondents' brief.) This contention was neither urged below nor passed upon by the trial or supreme court. Those courts held that the picketing was coercive and unlawful under the common law of the state. However, this declaration of public policy, assuming it does not infringe the Federal constitution, would apply only to the employers of labor and their employees. It says that the *employee*

"* * * shall be free from interference, restraint, or coercion of *employers of labor*, or their agents, in the designation of such representatives or in self-organization or in any other concerted activities for the purpose of collective bargaining or mutual aid or protection * * *." (Emphasis supplied)

If, as contended by respondents, the Washington

supreme court has construed this declaration of public policy to mean that peaceful picketing in the absence of a direct employer-employee relationship is unlawful, our answer is that, as so construed, the statute infringes the Fourteenth Amendment. This Court has held that neither the legislature nor the courts of the state may thus confine the scope of the Fourteenth Amendment.

American Federation of Labor v. Swing, 312 U.S. 321, 85 L. Ed. 855, 61 S. Ct. 568;

Cafeteria Employees Union v. Angelos, 320 U.S. 293, 88 L. Ed. 58, 64 S. Ct. 126.

In the first of these cases the Court said:

"The scope of the Fourteenth Amendment is not confined by the notion of a particular state regarding the wise limits of an injunction in an industrial dispute, *whether those limits be defined by statute or by the judicial organ of the state*. A state cannot exclude workingmen from peacefully exercising the right of ~~free~~ communication by drawing the circle of economic competition between employers and workers so small as to contain only an employer and those directly employed by him." (312 U.S. 326) (Emphasis supplied)

CONCLUSION

In conclusion we respectfully submit that the Supreme Court of Washington has held that peaceful picketing by a labor union is "unlawful" where there is no immediate employer-employee dispute and, being thus unlawful, is not protected by the Fourteenth Amendment. This holding, we submit, is directly in conflict with the decisions of this Court, cited above. The decree which the Supreme Court of Washington affirmed in this case permanently enjoins the petitioners from "in any manner picketing respondents' place of business" and in so doing deprives them of the right of freedom of speech guaranteed by the First and Fourteenth Amendments. And for these reasons the decree should be reversed.

Respectfully submitted,

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Attorneys for Petitioners.

Office - Supreme Court, U. S.

FILED

OCT 5 1949

CHARLES F. CLARKE, CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 309

INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN AND HELP-
ERS UNION, LOCAL 309, DICK KLINGE, ITS BUSINESS
AGENT, AND MEL ANDREWS, ITS SECRETARY,

Petitioners,

vs.

E. HANKE, L. J. HANKE, R. R. HANKE AND R. M.
HANKE, COPARTNERS DOING BUSINESS UNDER THE NAME
AND STYLE OF ATLAS AUTO REBUILD,

Respondents.

RESPONDENTS' BRIEF

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SUPREME COURT OF THE UNITED STATES

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Petitioners,

vs.

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HANKE, COPARTNERS DOING BUSINESS UNDER THE NAME
AND STYLE OF ATLAS AUTO REBUILD,

Respondents.

**ANSWER OF RESPONDENTS TO PETITION FOR
WRIT OF CERTIORARI TO THE SUPREME COURT
OF THE STATE OF WASHINGTON**

To the Honorable Supreme Court of the United States:

The Atlas Auto Rebuild, a co-partnership composed of A. E. Hanke, L. J. Hanke, R. R. Hanke and R. M. Hanke, now appear in opposition to petitioners' prayer for the issuance of a Writ of Certiorari directed to the Supreme Court of the State of Washington to review that Court's final

decree confirming the decree of the Superior Court of King County, Washington, permanently enjoining the picketing of respondent's place of business.

Statement of Matter Involved

We have no objection to petitioner's statement as set out on page 2, et sequitur, of their brief and we adopt it as our statement so far as it goes.

The Supreme Court of the State of Washington, the highest court of this state, is composed of nine members and this case was tried before the whole court and the judgment of the trial court was confirmed by six judges, three dissenting. All the decisions of this Court were cited and carefully considered by our State Supreme Court.

The judgment sought to be reviewed is the final and appealable judgment of that court.

Jurisdiction

We now object to the jurisdiction of this court to entertain this application for a writ of certiorari because there is no special reason why a direct appeal should not be taken and the judgment of the said court reviewed in that way.

Facts of the Case

It is said in part by our Supreme Court that the defendants are picketing and causing the business of the plaintiffs to be picketed as alleged in their complaint. * * *

That plaintiffs do not belong to any union and they employ no one whatsoever and no labor controversy exists, and said picketing of plaintiffs' place of business is carried on by defendants for the purpose and with the intention of coercing plaintiffs to join defendants' union or some union and to operate as a union shop.

That defendants are deliberately, by implied threats and intimidation, and by picketing and otherwise, seeking to prevent and are now preventing plaintiffs' customers from entering their place of business, with the result that plaintiffs' business is being gravely injured and interfered with and before long it will be destroyed, and that the controlling question involved in the appeal, under the facts in the instant case, is whether or not the granting of injunctive relief by the trial court against the appellant union and its representatives violates the provisions of the Federal Constitution forbidding abridgement of freedom of speech, and said statement ended by saying

"We are clearly of the opinion that the decree of the trial court in the instant case is not contrary to the provisions of the Constitution of the United States." (R. 31)

There was a like ruling in *Cline v. Automobile Drivers*, etc. Union by our Supreme Court on June 3, 1949, Vol. 133, No. 1, Washington Decisions, page 644.

The Question Presented

So the question before this court is whether or not the Fourteenth Amendment to the United States Constitution prevents the courts from granting injunctive relief against a labor union and the members thereof, to prohibit such union from peacefully picketing a business which employs no one, a member of the union or otherwise, for the purpose of compelling a copartnership to join a particular Union, or sign a contract not to operate a business during hours objectionable to the Union?

The Supreme Court of Washington has held, in the case at bar, that under such facts even peaceful picketing by a labor union "is unlawful and not protected by the 14th Amendment to the Constitution of the United States."

In the Trial Court, the judge trying this case held, as a Conclusion of Law, II, (R. 15),

"That no labor dispute exists within the meaning of the laws of the State of Washington and said picketing is, therefore, unlawful, and the plaintiffs are entitled to an injunction", etc.

Conclusion III was to the effect that said picketing was coercive and, therefore, an injunction forbidding the same would not infringe the defendants' right of freedom of speech, etc.

The Supreme Court of the State said, in its opinion, (R. 23)

"It will be borne in mind that at the time the picketing was started by the appellants, the respondents had no hired help, but, themselves, did all the work connected with the operation of their business; that no member of their partnership was a member of either Local 309 or Local 882, and that the controlling question involved in this appeal is whether or not under the facts of the instant case the granting of injunctive relief by the Trial Court against the appellant Union and its representatives violates the provisions of the Federal Constitution forbidding the abridgement of freedom of speech."

We quote the above to show clearly the exact issue and decision called for.

This decision followed and was made admittedly by the Trial Court following the recent holding of the State Supreme Court in Gazzam Bldg. Service Employees reported in 29 Wash. (2nd) 488, 188 Pac. 2nd 97, a case in which Gazzam contended that the sole purpose of the picketing and the listing as unfair was to compel him to coerce his employees to join the Union against their will; he further contended that coercion is contrary to the public policy of this state

as declared by the Labor Dispute Acts, Chap. 7, page 10, Laws of 1933, Ex. Ses. (Rem. Rev. Stat. Sup. 7612-2). The Union, on the other hand, contended that picketing by a union, even though such union does not include in its membership any employee of the party picketed is nevertheless legal.

In the case at bar, our State Supreme Court held as in the Gazzam case that the picketing activity conducted by the Union constituted coercion and was, therefore, unlawful; and granted a permanent injunction and these two cases are now the law of the State of Washington.

It was urged by petitioners that the holding in the Gazzam case and that in this case is in direct conflict with certain holdings of this court, but in the present case, after reviewing all of those decisions, the court said:

"Our view of the effect of these decisions does not coincide with that of appellant. We do not believe that the U. S. Supreme Court has ever held that the right of free speech is an absolute right, to be protected regardless of the deleterious effect so produced in regard to other interests also protected by the Federal Constitution; nor do we believe that the U. S. Supreme Court has ever said that a state is without power to abridge this right where such a course is necessary to protect property rights and is in the general interests of the community."

The respondent father and his sons chose to run their business alone and they were protected in this by the laws of our state, Rem. Rev. Stat. (Sup.) 7612-2, wherein it is said,

"Wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, etc."

Yet, in spite of this basic law, petitioners claim respondents have no right to work independent of unions and unions

have the right to tell them either to join the union or by contract to obey all union rules as to how and when they work; and if they refuse the union can do whatsoever is necessary to force them into line; that while picketing is done for the purpose of forcing them and to coerce them to do as demanded, such coercion is lawful under the doctrine of free speech.

This is a lawsuit between petitioners and a labor union that does not include in its membership any employee of respondents and respondents are engaged in a simple family business.

What right have petitioners to insist or demand, at the threat or cost of the destruction of respondents' business or at all, that respondents join appellants' organization or sign an agreement to work only as union employers would have to?

Of course there is nothing unlawful for these men, the father and his sons, to operate a little business, and any attempt, like in this case, to deny or cripple their right to do so, is an unwarranted attempt by picketing by the union to unreasonably interfere with the freedom of liberty and property right of contract.

While petitioners on their side have the right to belong to a union, on the other hand respondents have the right to operate their own business by themselves, and the right of the one is as strong as that of the other.

In the *Gazzam v. Bldg. Service, etc.*, 29 Wn. 2nd, p. 498, our court said:

"We considered the constitutional questions presented in the cases cited (including *Carpenters & Joiners Union of America v. Ritters Cafe*, 315 U.S. 722) and made clear the rule that should be applied in picketing as follows:

The U. S. Supreme Court has, by these cases, established this rule: Peaceful picketing is an exercise of the right of free speech. Organized labor has the right to communicate its views either by word of mouth or by use of placards. This is nothing more nor less than a method of persuasion. But when picketing ceases to be used for the purpose of persuasion—just the minute it steps over the line from persuasion to coercion—it loses the protection of the constitutional guaranty of free speech and the person or persons injured by its acts may apply to a court of equity for relief.”

Our court, in the instant case, held that

“The purpose of picketing in the present instance was (1) indirectly to compel the respondents to become members of one or the other, or possibly both of the two unions above mentioned; and (2) directly to coerce the respondents to enter into an agreement under which they would carry on their business only during those hours and days arbitrarily fixed by the Automobile Salesmen’s Union, Local 882. We now find and here declare that the picketing activity conducted by Local 309, at the instance of Local 882, constituted coercion and was therefore unlawful”. (R. 26).

If we may quote from the trial court’s decision, we refer to it on (R. 99):

“All picketing is coercive. The word ‘picketing’, of course, is taken from the nomenclature war. The only purpose that I can conceive of picketing is for the purpose of compelling the person picketed to accede to the demands of the one doing the picketing. The picket certainly had some other purpose in his patrol than exercise.”

In the case at bar, none of the respondents belonged to a union and refused to join the picketing union or any other. The object of the picketing was to compel the respondents, against their desire, to join the union. We contend that under

these circumstances the picketing was wrongful, coercive and oppressive and that it was properly enjoined. The picketing was never done as an act of persuasion but was intended as coercive and if continued would have made it impossible for respondents to have continued in business.

Your Honors said in the case of *Bakery & Pastry Drivers, etc. v. W.O.H.L.*, 315 U. S. 769, 86 L. Ed. 1178, 62 S. Ct. 816, that "A state is not required to tolerate in all places and all circumstances even peaceful picketing by an individual." That is the case most strongly relied upon by petitioners before the State Supreme Court, and that court found the facts so different as to be clearly and readily distinguishable. See the opinion in that case. The facts in the bakery case showed that the situation had grown so bad as to become a public menace. Our court said

"The facts of the case at bar present no such appealable picture"

and further said that the conclusion seemed irresistible that the union's interest in the welfare of a mere handful of members was far outweighed by the interest of individual proprietors and the people as a whole, to the end that little businessmen and property owners shall be free from dictation as to business policy by an outside group having but a relatively small and indirect interest in such policy.

The court quoted Justice Hughes in *Near v. Minnesota*, 283 U.S. 697, as follows:

"Whenever state action is challenged as a denial of 'liberty', the question always is whether the state has violated 'the essential attributes of that liberty' "

While the right of free speech is embodied in the liberty safeguarded by the due process clause, that clause postulates the authority of the state to translate into law local policies—

to promote the health, safety, morals and general welfare of its people * * * the limits of this sovereign power must always be determined with appropriate regard to the particular subject of its exercise, Ibid, at 707 (75 Law Ed. 1357, 51 S. Ct. at page 628). 'The boundary at which the conflicting interests balance cannot be determined by any general formula in advance, but points in the line, or helping to establish it, are fixed by decisions, that this or that concrete case falls on the nearer or further side'. *Hudson Water Co. v. McArthur*, 209 U.S. 349, etc."

Our court went on to say:

"In our opinion there is small reason for holding that the appellant union acting under the guise of protecting the union's freedom of speech, cannot be restrained from depriving the respondents of the liberty of lawfully conducting their business in the only manner that it could be profitably conducted."

"Our State of Washington, while not a party to this action, is interested in having its laws upheld, namely, its labor dispute act heretofore cited, and like this court stated in *Giboney v. Empire Storage & Ice Co.* (April 1949) 16 Labor Cases (c.c: 8 paragraph 65062) from Mo., we say here:

"There was clear danger imminent and that unless restrained appellants would succeed in making that policy a dead letter insofar as purchases by non-union men were concerned. Appellants' power with that of their allies was irresistible and it is clear that appellants were doing more than exercising the right of free speech or press. *Bakery Drivers v. Wohl*, 315 U.S. 769, 776, 777. They were exercising their normal power together with that of their allies to compel Empire to abide by union rather than by state regulation of trade."

So Your Honors held that Missouri's power to govern in this field was paramount and that nothing in the constitu-

tional guaranty of speech or press compelled a state to apply or not apply its anti-trade restraint law to groups of workers, businessmen or others. And said:

"Of course this court does not pass on the wisdom of the Missouri statute. We hold only that as here construed and applied it does not violate the Federal Constitution."

We think that the Giboney decision is in point and we also cite, without quoting or comment, your decisions in *Kovacs v. Cooper* (Jan. 1949) (Adv. Op. 379), and we believe under all these decisions that the picketing here involved, under all circumstances, under the policy of our legislature as established, is not protected under the free speech clause of our Federal Constitution. Non-employees were picketing for an unlawful purpose under the Giboney case and the opinion of our State Supreme Court in the present case is in accordance with the decisions of this court, and we respectfully urge that the petition for writ of certiorari should be denied.

Respectfully submitted,

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Office - Supreme Court, U. S.

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JAN 28 1950

CHARLES ELMORE GOSSETT

**In the
Supreme Court of the United States**

No. 309

**INTERNATIONAL BROTHERHOOD OF TEAM-
STERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS UNION LOCAL 309, et al,**
Petitioners

vs.

**A. E. HANKE, L. J. HANKE, R. R. HANKE, et al.,
etc.,**
Respondents,

**ON CERTIORARI TO THE SUPREME COURT OF THE STATE
OF WASHINGTON**

BRIEF OF RESPONDENTS

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**In the
Supreme Court of the United States**

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AND HELPERS UNION LOCAL 309, et al,**

Petitioners

vs.

**A. E. HANKE, L. J. HANKE, R. R. HANKE, et al.,
etc.,**

Respondents,

**ON CERTIORARI TO THE SUPREME COURT OF THE STATE
OF WASHINGTON**

BRIEF OF RESPONDENTS

THE OPINION OF THE COURT BELOW

The opinion of the Supreme Court of the State of Washington affirming the judgment of the trial court which granted a restraining order against the above petitioners as prayed for, is reported in Volume 133, No 11, Washington Decisions, at page 644. This opinion appears (at pp. 18-37) in the Transcript of Record.

STATEMENT OF THE CASE

The respondents were father and his three sons engaged in the business of repairing automobiles, selling

gasoline and automobile accessories and used automobiles, as the Atlas Auto Rebuild, in Seattle, and they worked at the business as and when they found it necessary. No one of them belonged to any union and they employed no help but did all the work themselves.

The petitioners were the Teamsters Union Local 309 organized as a labor union, a local Union No. 882, a labor union closely affiliated with 309 above, which embraced among its membership persons employed in the business of selling used cars (R. 11).

That on or about June 12, 1946, said local union No. 882 entered into a collective bargaining contract with what was known as the Independent Automobile Dealers Association of Seattle, to the effect (R. 13) that all show rooms and used car lots would close not later than 6:00 P.M. on all week-days and on Saturdays, Sundays and holidays, and that a sign should be posted to that effect. Respondents nor any of them ever entered into said contract.

Complaints reached petitioners that respondents were violating in regard to the agreement as to the hours and days of labor, and although they were not parties to the agreement, officers or agents of said local 882 on January 27, 1948, visited respondents' place of business and conferred with all of them together. A union shop card, secured by the party from whom respondents had purchased the business a couple of years

prior, and which had been left there by him, was in a window of the shop. These representatives said they would have to remove it unless at least one of the respondents joined the union or unless they signed up the agreement to abide by union rules and regulations in regard to hours and days of labor (R. 14).

Respondents took down the sign and handed it to these agents and said they could not sign the agreement and continue in business.

Thereafter, on February 12, 1948, a single picket appeared, wearing the usual sandwich sign, which read the same on both sides, in large letters: "Union people look for the union shop card, etc." This picket remained all day each day patrolling up and down in front of and alongside respondents' place of business, it being on a corner, talked to people who entered and took down the motor license numbers of respondents' patrons. Immediately thereafter, respondents' business fell off, and drivers for supply houses refused to deliver parts and other materials, and respondents were required to go to the dealers in their own trucks and secure such materials in order to carry on their business.

This picketing continued until restrained on February 24, 1948, by order of court.

Was not the picketing really calculated to force respondents to commit an unlawful act under our "Little

Norris-LaGuardia Act," to wit: To force them to join the Union, or worse, to sign a contract with the union to do exactly as the union dictated, regardless of their right to decline to associate with their fellows and to have full freedom of association as provided in the Act.

ARGUMENT

Section 2 of Chapter 7 of the Laws of Washington, 1933, Extraordinary Session, (Rem. Rev. Stat. Supp. §7612-2) provides in part:

"... the public policy of the State of Washington is hereby declared as follows:

"Whereas, under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, *though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment; and that he shall be free from interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protections; . . .*" (Emphasis supplied)

The picket line was thrown around respondents' business place to enforce this demand.

In the case at bar there was no employer and no employee, but the picketing informed them that they must join the Union or quit work. Under the above Statute, the picketing was unlawful.

In *Wilbank vs. Chester and Delaware Counties Bartenders, Hotel and Restaurant Employers' Local* (Pa.) Atl. Rep. 2nd. 60 at page 21, is a case where a majority of plaintiff's employees had not joined defendant Union and did not want to and plaintiffs refused to sign a contract which would require them to employ only union men, because they did not want to compel or coerce their employees to join a Union. The picketing was then started to compel them to force their employees to join the Union or be discharged.

The trial court held the picketing for that purpose was unlawful and enjoined it. Plaintiff offered no objection to the Union trying to persuade the men to join a Union. In this case too, men trying to make deliveries, as a result of the picket line, refused to do so, although they had before.

The Court held that the actions of the Union calculated to coerce the employers to commit a violation of the Penn. Labor Act of 1937 and the National Labor Relations Act of 1935.

"That the employees seem to prefer to exercise the right of not joining any union, a right which is protected by Sec. 5 of the Penn. Labor Relations Act of 1937. That Sec. 6 of the same Act makes it "an unlawful labor practice for an employer to interfere with or to coerce employees in the exercise of the rights guaranteed by the Act." The Court further said that such an organized effort to force plaintiffs to violate the law was not exercised by saying, as appellants' brief does, that picketing was done "solely for organizational purposes by persons engaged in the same trade," and went on to say that to do what was demanded, it was manifest that the plaintiffs would have to engage in an unfair labor practice as defined by the statutes just referred to; and in contravention thereof, to discharge over three-fourths of the employees involved—in effect to do something they could not legally do.

In the concurring opinion in *Bakery and Pastry Drivers and Helpers Local 802 vs. Wohl*, 315 U.S. 769, Judge Douglas said:

"Picketing by an organized group is more than free speech, since it involves patrol of a particular locality, and since the very presence of a picket line may induce action of one kind or another, quite irrespective of the nature of the ideas which are being disseminated. Hence those aspects of picketing make it a subject of restrictive legislation."

The Washington Supreme Court, in its opinion herein (R. 27) quoted from the *Shively* case, 6 Wn.

(2d) 560, and said that in that case they had to consider the question whether the constitutional guaranty of freedom of speech, as interpreted by the U.S. Supreme Court, is an absolute right which may be exercised without qualification, or whether, like other rights, it must be exercised with reasonable regard for the conflicting rights of others. Our Court went on to say "In the instant case, we are concerned with challenging appellants' right to carry on lawful businesses free from interference and respondents' (picketing members of the Union) right to freedom of speech. Neither of these rights is absolute, in the sense that it may be exercised in utter disregard of the other; both cannot be unqualifiedly exercised at the same time. It is within the power of the Court to decide whether appellants should be denied their right to conduct their business free from unjustifiable interference by respondents, or whether respondents' right of freedom of speech should be reasonably limited."

The opinion of Mr. Justice Brandeis, in *Senn v. Tile Layers' Union*, 301 U.S. 468, followed the current ruling strongly in the new direction—the direction not of social dogma, but of increased "deference to legislative judgment." "Whether it was wise," he said, (now speaking for the Court and not in dissent), "for the State to permit the Unions to picket, is a question of its public policy—not our concern."

Mr. Justice Frankfurter, in his concurring opinion in *A.F. of L. Union vs. American Sash Co.* reported in 335 U.S. No. 3, p. 525. Official Reports of this Court quoted the foregoing from Justice Brandeis in his opinion, and discussed at length the history of State Acts covering labor relations. He said in part:

“Whether it is preferable in the public interest that Trade Unions should be subjected to State intervention, or left to the free play of social forces, whether experience has disclosed ‘Union unfair labor practices,’ and if so, whether legislative correction is more appropriate than self discipline and the pressure of public opinion—these are questions on which it is not for us to express views.”

He went on to say on page 555, after discussing the value of trial and experiment with State Laws affecting labor, and saying that while the function of Courts, when legislation is challenged, is merely to make sure that the Legislature has exercised an allowable judgment, and not to exercise their own judgment, whether a policy is within or without “the vague contours” of due process, and further “in the day to day working of our democracy it is vital that the power of the non-democratic organ of our Government be exercised with rigorous self restraint. Because the powers exercised by this Court are inherently oligarchic.” And on page 557, after discussing the duties of this Court, said:

“Matters of policy, however, are by definition matters which demand the resolution of conflicts of

values, and the elements of conflicting values are largely imponderable" * * * "and obviously the proper forum for mediating the clash of feelings and rendering a prophetic judgment is the body chosen for these purposes by the people. Its functions can be assumed by this Court only in disregard of the historic limits of the Constitution."

We are not unmindful of the *Spring* case, 312 U.S. 21-85 L. Ed. 855, and of *Cafeteria Employees Union vs. Angelos*, 320 U.S. 293, 88 L. Ed. 58, but we believe they are distinguishable from the case at bar even under the free speech doctrine.

Our Court held

"That said picketing was coercive, and, therefore, an injunction prohibiting the same did not infringe the defendants' right for freedom of speech guaranteed by the 1st and 14th Amendments to the Constitution of the United States." (R. 16)

Appellants in their brief to this Court, in support of their petition for a writ herein, stated that the question presented "is the constitutional guaranty of freedom of communication infringed by the common law policy of a State forbidding peaceful picketing by a Labor Union, where there is no immediate employer-employee dispute." Our statute forbidding coercion of employers heretofore set out, is not common law policy, but one deliberately passed by our Legislature, one which it had the authority to pass.

Picket lines thrown out in this State by the American Federation of Labor under the orders of "Dave Beck" is more than speech. It is an order which from past experiences of Union People and the public in general, is a compulsion, one that the laboring people and all of us have been taught to listen to and obey, and it is known that to disobey or ignore it, is dangerous. If picketing here is speech, it is certainly much more. However apparently peaceful it may be carried on, it possesses elements of compulsion upon the persons picketed which bear little relation to the communication to anyone of information or of ideas. That was the particular idea which caused the men trying to deliver supplies to respondents to stop, look and turn back, and caused them to refuse to make any deliveries.

The picket line is commonly resorted to because of these elements, which means more than any force of argument contained in it to give it the power it possesses. To fail to recognize these facts is to put reality aside, all as said in the Massachusetts Court in *Soverall v. Demers*, 76 N.E. (2d) 12, 2 A.L.R. (2d) 1190, which held that picketing, although done without disturbance, threat or forceful interference with customers (peaceful picketing) was unlawful under the State law, and not in the exercise of the constitutional rights of freedom of speech. The Court said:

"If picketing is speech it is certainly much more. However peacefully it may be carried on it

possesses elements of compulsion upon the persons picketed which bear little relation to the communication to anyone of information or of ideas. And resort is commonly had to it precisely because of these elements which much more than any force of argument contained in it give it the power it possesses. To fail to recognize these facts is to put reality aside.

"It would seem therefore that even if picketing is constitutionally protected in its aspects as speech, it must, because of its other aspects, be subject to some degree of regulation as to circumstances, manner and even object, lest orderly existence be submerged in a flood of picketing by groups of people having no peculiar rights of their own, to make other people do what they do not wish to do, and as free men are under no obligation to do."

The State of Washington finally was led by the force of public opinion to enact our public policy Statute under the title of "Labor Law" found in Sec. 7612-2, Rem. Rev. Stat. (Sup.) of 1933 fixing our policy relative to labor matters, and it recited that whereas under prevailing economic conditions the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore he should be free to decline to associate with his fellows, it was necessary, the court said, that he have full freedom of association; and we believe therefore it must be held that,

under the above, he can work for himself if he finds it preferable; and that to picket him to make him join with others in a union or association, is in disregard of the law of this State and unlawful.

Referring to the *Wohl* case, the Washington Court said: .

"The facts of the case at bar present no such appealing picture in favor of the appellants. Local 882 on whose behalf appellant Local 309 set up the picket line, in front of respondents' place of business, represents the used-car salesman in the Seattle area. Of 115 such concerns, only ten employ any help at all, the remainder being operated exclusively by their proprietors. From this fact, the conclusion seems irresistible that the Union's interest in the welfare of a mere handful of members (of whose working conditions no complaint at all is made) is, far outweighed by the interests of individual proprietors and the people of the community as a whole, to the end that little businessmen and property owners shall be free from dictation as to business policy by an outside group having but a relatively small and indirect interest in such policy."

The issue in the *Swing* case, 312 U.S. 321, as stated by the Court, is the constitutional guaranty of freedom of discussion infringed by the common law policy of a State forbidding resort to peaceful picketing merely because there is no immediate employer-employee dispute. The Court said, "The right of free communication cannot therefore be mutilated by denying it to workers in a dispute with an employer, even though

they are not in his employ." * * * "Members of a union might, without special statutory authorization by a State, make known the facts of a labor dispute, for freedom of speech is guaranteed by the Federal Constitution."

In *Drivers' Union v. Meadowmoore Co.*, from Ill. 312 U.S. 294, the Court said:

"The place to resolve conflicts in the testimony, and its interpretations, was in the Illinois courts and not here. To substitute our judgment for that of the State Courts is to transcend the limits of our authority, and to do so in the name of the 14th Amendment in a matter peculiarly touching the local policy of a State regarding violence, tends to discredit the great immunities of the Bill of Rights."

We can interject here that our State Supreme Court said:

"We now find and here declare that the picketing activity conducted by Local 309 at the instance of Local 882, constituted coercion, and was therefore unlawful." (R. 26).

In the *Meadowmoore* case, above, Justice Frankfurter said:

"Just because these industrial conflicts raise anxious difficulties, it is most important for us not to intrude into the realm of policy making by reading our notions into the constitution."

In *Peters v. Central Labor Council* (Or.), 169 Pac. (2d) 874, the Court said:

"It is significant that in those cases where the Supreme Court identified picketing with free speech, no unlawful purpose of the picketing was involved. That courts may take into consideration the purpose of the picketing is established by the great weight of authority. (Citations)

In the *Swing* and several other cases where this Court identified picketing with free speech, no case seemed to involve an unlawful purpose. It was not unlawful in the State where the *Swing* case arose to do what was done by the picketing.

In *R. H. White Co. v. Murphy* (Mass.), 38 N.E. (2d) 685, on page 691, the Court said:

"It there appears that the Thornhill, Carlson and Swing cases are distinguishable in the fact that in none of them did it appear that the picketing was in violation of any valid statute or ordinance, or that it was for an unlawful purpose."

It was found in the following case that the methods adopted by Union to induce customers to breach their contracts with the Master Painters were unlawful, and for an unlawful purpose and the Court, in *Parker Paint & Wall Paper Co. vs. Local Union No. 813*, 87 W. Va. 631-105 S.E. 911, 16 A.L.R. 222 said:

"It is not clear just what reasons dictated the acts contained in the Bill. * * * If for the purpose of preventing a member of the Master Painters from laboring with its hands in performing his own contracts, it is unlawful. A man's labor is his most sacred asset. It is often his only capital, and as long as he exerts it without injury to others,

Government will protect him. A Government which imposes taxes and other public duties, even going so far as to demand life for its defense, and which will not protect its subjects in the enjoyment of life and liberty with the means of acquiring property and of pursuing and obtaining happiness and safety, is not worthy of the name of Government, nor of the support of its subjects."

The Union was enjoined. This argument would seem to apply to the case at bar, as relating to respondents. In the case at bar, Mr. Hanke, the father, had three sons whom he had brought up, educated and the father and sons had acquired ability as automobile mechanics, and he doubtless was very happy to have them all in business with him and making a living, each helping the other; but this apparently could not go on for the Union said it couldn't—they must join the Union and do business along certain lines and rules fixed by outsiders. The testimony of respondents was to the effect that it was impossible for them to continue in business if they had to operate under the contract rules, as demanded by the Union as to hours and days of work (R. 81) (R. 84). A copy of proposed contract is read into testimony (R. 75).

In *Campbell vs. Motion Picture Machine Operators' Union*, 151 Minn. 220, 186 N.W. 781, the State had an Anti-Trust Act very like the Sherman Anti-Trust Act, and the Court held that this Act had been violated by Union picketing, after its demands that

the plaintiff have his machine operated by union men. Their rules provided that an employer in that business could not join the Union and could not operate a machine himself. The Court held the Union purposes of the picketing in question was unlawful.

In *Silkworth vs. Local No. 575 of A.F.L. (Mich)*, 16 N.W. 145, the facts are that plaintiffs were engaged in business of selling gasoline and fuel oil to dealers and consumers. The Union demanded that they place all of their drivers in the Union and they (the employers) pay their fees for joining, and upon plaintiffs' refusal the Union placed a picket line about their plant. There was no labor dispute, and no strike and no violence. The Court held there was no bona fide labor dispute with anyone and that the demand of the Union was illegal, unjust and extortionate, particularly in demanding that the plaintiffs pay initiation fees for their men, and issued an injunction against the picketing.

In New York in numerous cases, it was held that no labor dispute existed and that an injunction would lie in cases like this—where the plaintiffs were two brothers and a sister, conducting a small retail fish store as partners, discharging their sole employee at the expiration of their contract with the Union, because of insufficient business. The Union thereupon sought by picketing to induce them to enter into a new contract under which they would agree to engage un-

ion labor in the future, if the need for employees should arise. The above case is entitled *Miller vs. Fish Workers Union* (1939), 170 Misc. 713-11 N.Y.S. (2d) 278. The injunction was granted against the picketing of plaintiffs premises by the defendant Union. In New York there is the Little Norris-LaGuardia Act.

In *Carpenters and Joiners Union vs. Ritters' Cafe*, 315 U.S. 722, the fact showed that Ritter was engaged in business alone, and did not employ labor, and the Carpenters' Union picketed his cafe. The picketing was enjoined by the State Court. In sustaining the power of the State Court to do so, Justice Frankfurter, speaking for the Court, said:

"The economic contest between employer and employee has never concerned merely the immediate disputants. The clash of such conflicting interest inevitably implicates the well being of the community. Society has therefore been compelled to throw its weight into the contest. The law has undertaken to balance the effort of the employer to carry on his business free from the interference of others against the effort of labor to further its economic self-interest. And every intervention of Government in this struggle has in some respect abridged the freedom of action of one or the other, or both.

"The task of mediating between these competing interests has, until recently been left largely to judicial lawmaking and not to legislation . . . the right of the state to determine whether the common interest is best served by imposing some restrictions upon the use of weapons for inflicting

economic injury in the struggle of conflicting, industrial forces has not previously been doubted.
* * *

"But the circumstance that a labor dispute is the occasion of exercising freedom of expression does not give that freedom any greater constitutional sanction or render it completely inviolable. Where, as here, claims on behalf of free speech are met with claims on behalf of the authority of the State to impose reasonable regulations for the protection of the community as a whole, the duty of this Court is plain."

In the *Bantista vs. Jones* (Cal.) 155 P. (2d) at 343, relative to facts in that case, the Court said:

"On the other hand, a person has the right to own and control his own business, work in that business with his own hands, refuse to employ workers for whom he has no need, and to procure merchandise or products without which the business could not operate. It is these conflicting interests which must be weighed in determining the respective rights of the parties."

In *Giboney vs. Empire Storage & Ice Co.* (Mo.), 336 U.S. 490-69 S. Ct. R. 684. The union had as members 160 of 200 retail ice peddlers who drove their own trucks, and began efforts to induce all to join. They sought to obtain an agreement from all wholesalers not to sell to non-union men. Empire refused and its place was picketed. The avowed purpose was to compel it to stop selling ice to non-union men. The Missouri statute made such an agreement as demanded a crime. The men furnishing supplies to Empire refused to

cross the picket lines to make deliveries. Empire's business was nearly ruined. Under the Missouri law, if it had refused to sell to the non-union men, it could have been subjected to triple damages so that it appealed to the court for a restraining order.

The union asserted a right to continue doing what they were doing, under the right of free speech as guaranteed. The injunction was granted by the trial court and sustained in the Supreme Court of that state and Empire appealed to the Supreme Court of the United States.

The union urged that their right to publish notice of their grievances by picketing was superior to all others and that all attention must be focused upon their lawful purpose to improve labor conditions, and the fact that they were breaching state laws in doing so was merely incidental to their lawful purpose. The court said, while the State of Missouri is not a party to this case it was plain that the basic issue was whether Missouri or a labor union had paramount constitutional power to regulate and govern the manner in which certain trade practices should be carried on in Kansas City, Missouri; that Missouri has by statute regulated trade one way. The appellant union members have adopted a program to regulate it another way. The state has provided for enforcement of its statutory role by imposing civil and criminal sanctions; that the

union had provided for enforcement of its role by sanctions; against union members who cross picket lines.

The court, speaking through Justice Black, held "that the state's power to govern in this field was paramount and that nothing in the constitutional guaranties of speech or press compels a state to apply or not to apply its anti-trade law to groups of workers, business men or others. It was added "of course this court does not pass on the wisdom of the Missouri statute."

In *Duplex Printing Co. vs. Deeming*, 254 U.S. 443, at page 488, 41 S. Ct. 172, at page 184, 65 L. Ed. 349, 16 A.L.R. 196. On that page the opinion stated:

"The conditions developed in industry may be such that those engaged in it cannot continue their struggle without danger to the community. But it is not for judges to determine whether such conditions exist, nor is it their function to set the limits of permissible contest and to declare the duties which the new situation demands. This is the function of the legislature which while limiting individual and group rights of aggression and defense, may substitute processes of justice for the more primitive method of trial by combat."

CONCLUSION

In a brief summary of the question before us, we have the following salient features:

1. Respondents constitute a partnership of father and sons, employing no help and endeavoring to establish a small business.

2. No one questions the conclusiveness of the record that the picketing was coercive.

3. That the picketing was not for 'organizational purposes but for the sole purpose of compelling respondents to become members of a certain Union with whom they wanted no affiliation, and which was contrary to the express statutes of the State of Washington; or join others in a contract in restraint of trade contrary to the statutes and laws of the State of Washington, and possibly the Anti-trust laws of the Federal Government.

4. That under the repeated expressions of this Court, the elements of recognized State rights, included the authority to enact legislation controlling the extension of organized union activities, beyond the boundaries prescribed by the First Amendment to the United States Constitution, commonly referred to as the right to freedom of speech; and on the face of the record, the Statutes of the State of Washington, with its interpretation by the State Supreme Court, seems to naturally align itself with other states passing similar legislation, including the States of Missouri, Arizona and North Carolina, wherein this Court has recently and effectively held that such legislation was corrective and appropriate.

All of the foregoing summaries do seem to indicate that the Supreme Court of the State of Washington correctly interpreted the State laws as well as the Fed-

eral Laws and Statutes, but if this is not clearly the case, would it not be well to re-examine the principles in order that there may be a fair and just application of these principles to the case of these respondents?

The respondents here have done nothing morally wrong, unless we determine that it is wrong for a small business to establish itself by the only known method—indefatigable effort and hard work. When the Courts of Chancery were first established, it was for the purpose of correcting in some measure the rigorous injustice of the common law, and so the Courts of equity builded step by step a system of jurisprudence that was fair to minorities. Throughout our Courts have recognized that conditions change from one generation to another, and that the laws of equity and justice must necessarily change with them. There was a time in our Country's history when it was deemed wise to establish a protective tariff to enable small business to prosper, and this was described by the "Great Commoner" as a policy "to enable infant industries to stand upon their feet, but these industries had grown so large that they could not only stand upon their own feet, but walk all over the feet of other people." At the turn of this century organized labor may have been a weakling, but today no one with a penchant for accurate statements, would suggest that labor unions are still in that classification. On the other hand, the pendulum has swung very far indeed in the opposite direction, and now it

is the real small business, the minorities, who need the aid of the Courts. The test of a real Democracy is the extent to which it goes to protect minorities, as contrary to that other political philosophy that the "ends justify the means," and the minorities may be sacrificed to those ends. Let us not be deceived. The small business man is now "the forgotten man." He must be permitted to live and expand if we are to maintain a healthy and vigorous industrial growth. No one can deny the facts of history, that greed and corruption have thrived in the huge corporations known as "Big Business." Let us not sanction the same results to be brought about through the utter disregard of the rights of individuals, by the power and bigness of the Labor Unions.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1949

No. 309

**INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN, AND HELPERS
UNION, LOCAL 309, DICK KLINGE, Its Business
Agent, and MEL ANDREWS, Its Secretary,**
Petitioners,

vs.

**A. E. HANKE, L. J. HANKE, R. R. HANKE and R. M.
HANKE, Copartners Doing Business Under the Name
and Style of ATLAS AUTO REBUILD,**

Respondents.

No. 364

**AUTOMOBILE DRIVERS AND DEMONSTRATORS
LOCAL UNION NO. 882, RALPH REINERTSEN, Its
Business Agent, and J. J. ROHAN, Its Secretary,**
Petitioners,

vs.

GEORGE E. CLINE,

Respondent.

**On Petition for Writ of Certiorari to the Supreme Court of
the State of Washington.**

**BRIEF ON BEHALF OF
AMERICAN FEDERATION OF LABOR,
AMICUS CURIAE**

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**BRIEF ON BEHALF OF
AMERICAN FEDERATION OF LABOR,
AMICUS CURIAE**

Interest in Proceedings

The American Federation of Labor has requested the parties to the above cases for permission to file a brief as

amicus curiae and has been granted such permission. The interest of the American Federation of Labor in these cases arises out of the fact that it appears that any decisions herein will involve an examination of the extent and scope of the entire concept of picketing as a concomitant of free speech, so that this Honorable Court's ultimate determination will have an important impact upon all of organized labor. The protections given to the right to peacefully picket under prior decisions of this Court are directly threatened by the determinations of the Supreme Court of Washington in the above two cases, and the American Federation of Labor desires the indulgence of this Court to present its views on the issues here involved. A reading of the records, decisions, and briefs in the above cases convince us that ~~are~~ ^{are} here presented important issues beyond and in addition to those briefed by counsel for the parties and ~~redeem~~ it necessary to a proper determination of these cases that such additional issues as set forth below be presented and discussed. We have been unable to file this brief prior to the present date because we have not until now had opportunity to study all the briefs of the parties to these proceedings.

The Issues

A reading of the briefs filed in the above cases by counsel for appellants and respondents discloses an apparent considerable variance concerning the scope of the issue or issues involved. It is, of course, indispensable to a proper determination of these cases that the issues be precisely defined and that the implication of the state courts' decisions herein be clearly comprehended. The issues and the implication of the state court decisions can be ascertained only by determining the following: (1) the purpose or objective of the picketing that took place in the two cases, (2) the manner in which the picketing was carried on, (3) the scope

of the injunctions against the picketing, and (4) the theory or reasoning under which the injunctions against picketing were sustained by the state court.

Both cases involved an attempt by locals of the International Brotherhood of Teamsters, A. F. of L., peacefully to picket the premises of automobile dealers in the Seattle, Washington, area in a labor dispute involving the hours of operation of such dealers. All such picketing in such dispute was enjoined by the Washington courts.

1. The Purpose of the Picketing in Both Case 309 and Case 364 Was to Protest Failure of an Employer to Observe Union Hours of Operation; an Additional Purpose in Case 364 Was to Protest Failure to Employ One Union Salesman.

In Case No. 309 the trial court made specific findings of fact that the purpose of the picketing was simply to protest the fact that the automobile dealer in question insisted on operating his business on Saturdays, Sundays and holidays contrary to the practice established in the area under union agreements of not working on those days. As found by the trial court (Findings of Fact No. VIII, R. 14):

“They did not insist on the plaintiffs becoming members of said Local 882 or the defendant Local No. 309, but merely protested as to their violation of the clause of the agreement [relating to days of operation] above quoted.”

The Supreme Court of Washington, in its decision in the Local No. 309 case (R. 22), found that

“The substance of the conversation that took place at that time, as found by the trial court, is that the representatives of Local 309 demanded that respondents comply with the terms of the agreement entered into by and between Local 882 and Independent Automobile Dealers Association [relating to days of operation], . . .”

It is true that further on in its decision the Court did state (R. 26) that

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"The purpose of the picketing in the present instance was (1), indirectly, to compel the respondents to become members of one or the other, or possibly both, of the two unions above mentioned; and (2), directly, to coerce the respondents to enter into an agreement under which they would carry on their business only during the hours and days arbitrarily fixed by the Automobile Salesmen's Union, Local 882."

However, the statement that it was "indirectly" the purpose to compel respondents to become members of the union is a gratuitous assumption not based on anything in the record and directly contrary to the unchallenged specific finding of the trial court that the union "did not insist on the plaintiffs becoming members of said Local 882 or the defendant Local No. 309" (R. 14). Accordingly, this assumption of the Supreme Court of Washington concerning the indirect purpose of the picketing must be disregarded, and we are left with the conclusion that the sole purpose of the picketing in Case No. 309 was to require the automobile dealer in question to conform to the hours prescribed in union contracts prevalent in the area.

In Case No. 364 the trial court found as follows concerning the purpose of the picketing (Finding No. VIII, R. 7):

"That the defendant union in accordance with its new contract with the Dealers Association is demanding that as a condition to the removal of said pickets, Plaintiff refrain from opening his place of business after 1:00 o'clock on Saturdays, and that Plaintiff further employ a member of the Defendant union, said employees to be compensated by being paid Seven (7%) per cent of all sales made at Plaintiff's place of business, irrespective of whether or not any sale might be made by Plaintiff."

The Supreme Court of Washington, in its decision, made the identical finding (R. 23). From the foregoing it is clear that the purpose of the picketing in Case No. 364 was identical with the purpose in Case No. 309, and that, in addition,

in Case No. 364 the purpose of the picketing was to protest the failure of the employer to employ a union member. (For the purpose of this brief amicus curiae, we will assume that the purpose of the picketing in Case No. 364 was as found by the trial court and by the State Supreme Court, and we will nevertheless demonstrate that the blanket injunction therein must either be modified or withdrawn.)

2. The Picketing in Both Cases Was Entirely Peaceful.

The trial court in Case No. 309 specifically found (R. 15) that "Said picketing was entirely peaceful, the picket neither threatening nor molesting anyone seeking to enter or leave plaintiffs' place of business." The trial court in Case No. 364 made a similar finding (R. 7):

"That said picketing was entirely peaceful, the pickets neither using force nor threatening physical violence nor molesting anyone either seeking to enter or leave Plaintiff's place of business."

These findings were expressly affirmed by the State Supreme Court in its decisions in both cases (Case No. 309, R. 22; Case No. 364, R. 23).

The picket sign in Case No. 309 simply stated that "Union people look for the union shop card" (R. 15, 22). In Case No. 364 the sign simply stated that the employer's place of business was "unfair" to the union (R. 7, 23). In Case 309 only one picket was used who carried the sign in question; in Case 364 normally two pickets were used.

3. The Injunction in Both Cases Was a Blanket One Forbidding Any and All Types of Picketing, Regardless of Purpose.

The injunction issued by the trial court in both Case No. 309 (R. 17) and in Case No. 364 (R. 16) provided as follows:

"... the defendants, and each of them, be and they are hereby permanently restrained and enjoined from

in any manner picketing the plaintiffs' place of business"

These injunctions were sustained by the Supreme Court of Washington (Case No. 309, R. 27; Case No. 364, R. 25). Thus it can be seen that the injunction in both cases was an extremely broad and all-inclusive one, leaving no exception for the manner or place in which the picketing was being conducted, or the purpose of the picketing. More specifically, in both cases the picketing to protest the refusal of the employer to work the union scale of hours was interdicted, so that the unions in question were forbidden by the use of picket signs to call the public's attention to the fact that the dealer was operating in excess of union hours to the end that those sympathetic with the position of the union might refuse to patronize the dealer's business.

4. The Blanket Injunction Against Peaceful Picketing Was Sustained by the State Supreme Court on the Theory (1) That, Because the Picketing Was Effective in Lessening Patronage, It Inflicted Economic Injury and Was Therefore Coercive and Unlawful, (2) That the Unions' Demands Were Arbitrary, So That Restrictions on Picketing Were Justified as "Necessary to Protect Property Rights," and (3) That There Existed No Immediate Employer-Employee Relationship. In Addition, the Prohibition on Picketing in Case No. 364 Was Sustained on the Theory, Presumably, That the Purpose Was to Require the Employer to Hire a Union Salesman, Such Requirement Being Forbidden by State Law.

A reading of the State Supreme Court's decision in Case No. 309 indicates conclusively that the Court was concerned primarily with its right to protect property rights against union demands that the Court considered arbitrary or excessive and, therefore, illegal, even though not declared illegal by state statute or at common law, and against

picketing which the Court considered coercive because it was effective. The following excerpts from the Court's decision are indicative of this concept:

"... nor do we believe that the United States Supreme Court has ever said that a state is without power to abridge this right [free speech] where such a course is necessary to protect property rights and is in the general interests of the community." (R. 27.)

"From this fact, the conclusion seems irresistible that the union's interest in the welfare of a mere handful of members (of whose working conditions no complaint at all is made) is far outweighed by the interests of individual proprietors and the people of the community as a whole, to the end that little businessmen and property owners shall be free from dictation as to business policy by an outside group having but a relatively small and indirect interest in such policy." (R. 30.)

"In our opinion, there is small reason for holding that the appellant union, acting under the guise of protecting the union's freedom of speech, cannot be restrained from depriving the respondents of the liberty of lawfully conducting their business in the only manner that it could be profitably conducted." (R. 31.)

The Court equated protections available to property and business rights under the Constitution with the constitutional protections afforded the right of free speech. It stated in this respect as follows:

"In the instant case, we are concerned with balancing appellants' [the employers'] right to carry on lawful businesses, free from unreasonable interference, and respondents' [picketing members of a union] right to freedom of speech. Neither of these rights is absolute, in the sense that it may be exercised in utter disregard of the other; both cannot be unqualifiedly exercised at the same time. It is within the power of the court to decide whether appellants should be denied their right to conduct their businesses free from unjustifiable interference by respondents, or whether

respondents' rights of freedom of speech should be reasonably limited." (R. 27.)

In addition, there is general language throughout the decision indicating that the Court finds justification for the injunction in the fact that there is no dispute between the employer and his immediate employees, the employer having no employees.

In Case No. 364 the Supreme Court predicated its decision in upholding the injunction on its reasoning in Case No. 309, expressly adopting its views there as applicable to the situation in Case No. 364. In addition, in Case No. 364 the Court relied on its ruling in the matter of *Gazzam v. Building Service Employees International Union*, 29 Wash. (2d) 488, 188 P. (2d) 97. In that case the Court had held that any attempt by peaceful picketing to require an employer to "force" his employees to join a union was contrary to state law as prescribed in the declaration of policy in the state Little Norris-LaGuardia Act and was, therefore, enjoined.

It is to be noted that in Case No. 309 the purpose of the picketing is not illegal either under state statute or under state common law; that is, there is nothing in the law of the State of Washington to prevent an employer from acceding to a union's request that it work only on certain days or hours of the week, nor is there any law in the State of Washington to prevent a union from attempting to limit hours of employment. Similarly, in Case No. 364 there was nothing unlawful in the first purpose of the union to require the employer to conform to union-established days of operation. Whether there was anything unlawful in the second purpose of the picketing (to protest the failure to hire union members) is an issue which will be determined in Case No. 449. However, irrespective of legality or illegality of this second purpose, the Court enjoined all picketing regardless of purpose or method.

Having determined the purpose and manner of the picket-

ing, the scope of the injunctions and the theory on which the injunctions were sustained by the Supreme Court of Washington, it is now possible more precisely to determine the issues which confront this Court in the present cases and the questions which must be determined. We respectfully submit that they are as follows:

1. (Applicable to both cases) Can a state court, consistent with the First Amendment, impose blanket restrictions upon peaceful picketing even though no direct employer-employee relationship exists in the particular labor dispute, by terming the union objectives therein unlawful even though such objectives are traditional ones and not unlawful under state statute or common law, and by terming the picketing coercive because effective in reducing patronage?

2. (Applicable solely to Case 364) Can a state court, consistent with the First Amendment, impose a blanket injunction against peaceful picketing, regardless of the purposes of the picketing, in a situation where one purpose is lawful and the other purpose may be unlawful?

It is respectfully submitted that the answer to both of the above queries is No. The reasons for this conclusion follow:

ARGUMENT

I.

A STATE COURT CANNOT, CONSISTENT WITH THE FIRST AMENDMENT, IMPOSE BLANKET RESTRICTIONS UPON PEACEFUL PICKETING, EVEN THOUGH NO DIRECT EMPLOYER-EMPLOYEE RELATIONSHIP EXISTS IN THE PARTICULAR LABOR DISPUTE, BY TERMING THE UNION OBJECTIVES THEREIN UNLAWFUL WHERE SUCH OBJECTIVES ARE TRADITIONAL ONES AND NOT UNLAWFUL UNDER STATE STATUTE OR COMMON LAW, OR BY TERMING THE PICKETING COERCIVE BECAUSE EFFECTIVE IN REDUCING PATRONAGE.

In so far as the purpose or object of the picketing in both Case No. 309 and Case No. 364 was to require an employer to comply with certain hours or days of labor prevalent under union agreements in the area, it is to be noted that the Supreme Court of Washington did not and could not find that such objective or its accomplishment was in itself an unlawful one under state law, statutory, constitutional or common. On the contrary, the establishment of minimum hours of operation or days of rest and recreation has traditionally constituted a prime function of trade unions. An automobile dealer in the Seattle area could, as most dealers did, agree with a labor organization not to operate on Saturdays, Sundays and holidays without violating any state or municipal law.

In *Wright v. Teamsters Union*, 133 Wash. Dec. 869, 207 Pac. (2d) 662 (decided June 24, 1949), there was involved a situation where the union was picketing for the purpose of requiring the employer not to operate on Sundays. The Supreme Court of Washington, in noting that this purpose was a perfectly lawful one, stated as follows:

"In the instant case, on the other hand, Owens being a union member, the union had a clear right to proceed against Wright in order to persuade him to enter into an agreement with it whereby Owens would be worked under the same conditions as other union members in the Pasco vicinity. . . .

"It is incidentally noteworthy that the union's position derives a certain added equitable force from the fact that the chief reason that Wright declined to sign the agreement was that he wished the market to continue selling meat on Sundays; in spite of the fact that Rem. Red. Stat., Sec. 2494, provides as follows: 'Every person who, on the first day of the week, shall . . . sell, offer or expose for sale, any personal property, shall be guilty of a misdemeanor; provided, . . . nothing in this section shall be construed to permit the sale of uncooked meats. . . .'"

The situation, then, in Cases No. 309 and 364 is entirely distinguishable from the situation in the *Giboney* case (*Giboney v. Empire Storage & Ice Co.*, 336 U.S. 490) where the object of the interdicted picketing was found by this Court to be to require an employer to enter into an agreement in itself unlawful under a valid state anti-trust law. Accordingly, the only possible justifications for the blanket injunctions against picketing to require the employer to conform to the union hours of labor which could be, and which in fact were, advanced by the State Supreme Court were (1) that no immediate employer-employee relationship existed, none of the automobile dealer's employees or partners being members of the union or desiring to join the union, and (2) that the picketing was coercive not because of the presence of any violence or intimidation but because it was effective in causing economic hurt to plaintiff's business by withdrawal of patronage, and the demand of the union being unlawful because, in its opinion, it was "arbitrary."

As to the first of the foregoing justifications—lack of immediate employer-employee relationship—it would appear that the decisions of this Court in *American Federation of Labor v. Swing*, 312 U.S. 321, *Bakery & Pastry Drivers, etc., v. Wohl*, 315 U.S. 769, and *Cafeteria Employees Union v. Angelo's*, 320 U.S. 293, are conclusive on the proposition that mere absence of an immediate employer-employee relationship in itself does not constitute sufficient warranty for state proscription of the right to picket. These cases and their application to the present

¹There is some suggestion in the opinion of the Washington Supreme Court in Case No. 309 that union interests could be disregarded because it represented "only a mere handful of members" (R. 30). The inadequacies of such justification, if indeed it has been advanced as one, for restrictions on peaceful picketing is so obvious as to warrant no discussion. "The interdependence of economic interest of all engaged in the same industry has become a commonplace." *American Federation of Labor v. Swing*, 312 U.S. at 326. See also *Apex Hosiery Co. v. Leader*, 310 U.S. 469, and *Thornhill v. Alabama*, 310 U.S. 88.

cases are fully discussed in the petitioners' briefs in Cases Nos. 309 and 364. It would appear that, unless this Court is prepared to overrule its determination in the above cases, the claimed justification by reason of lack of employer-employee relationship must be deemed insufficient.

The justification of alleged "coercive" picketing and alleged "arbitrary" demands requires somewhat fuller discussion. The proposition has long since been laid down by this Court that the economic consequences of peaceful picketing in themselves afford no justification for prohibition of such picketing which is otherwise permissible. The theory of the Washington court was that, since the picketing in Cases Nos. 309 and 364 operated to impair the right of the employer to carry on his business free from the interference of others, and because the picketing results in diversion of patronage and services from the employer and thereby caused economic loss, it may be prohibited. The argument is that because union workers do not, save in exceptional circumstances, cross a picket line, either to perform services or to purchase goods, thereby injuring the picketed enterprise, these economic consequences of picketing render it subject to prohibition.

What this argument comes to is that because of its concern for the economic interests of business enterprises which are involved in labor disputes, a court may prohibit employees from exercising their constitutional right to peaceful picketing. This argument has been repeatedly rejected by this Court.

In *Milk Wagon Drivers v. Meadowmoor Dairies*, 312 U.S. 287, at 193, the Supreme Court referred to peaceful picketing as "the workingman's method of communication." In *Thornhill v. Alabama*, 310 U.S. 88, at 103, the Court held that the "right of employees effectively to inform the public [through picketing] of the facts of a labor dispute" is "within that area of free discussion that is guaranteed by the Constitution."

Those who would deny to peaceful picketing the protections of the First Amendment have always argued that peaceful picketing may be banned because its purpose is to persuade persons not to perform services or to purchase merchandise and that the resultant detriment to the business picketed should take precedence over the worker's interests. It was on this theory that Shasta County, California, sought to justify the ban on picketing which was invalidated by the Supreme Court in the *Carlson* case (*Carlson v. California*, 310 U.S. 106, 112). The Court there said:

"It is true that the ordinance requires proof of a purpose to persuade others not to buy merchandise or perform services. Such a purpose could be found in the case of nearly every person engaged in publicizing the facts of a labor dispute; every employee or a member of a union who engaged in such activity in the vicinity of a place of business could be found desirous of accomplishing such objectives; disinterested persons (who might be hired to carry signs) appear to be a possible, but unlikely, exception. In brief, the ordinance . . . proscribes the carrying of signs only if by persons directly interested who approach the vicinity of a labor dispute to convey information about the dispute."

In the *Thornhill* case, 310 U.S. at 104, the Supreme Court recognized that picketing, if effective, might have serious economic repercussions upon the picketed enterprise. This, said the Court, did not serve to remove picketing from the orbit of constitutional protection. Picketing, the Court held, "may persuade some of those reached to refrain from entering into advantageous relations with the business establishment which is the scene of the dispute. But the group in power at any moment may not impose penal sanctions on peaceful and truthful discussion of matters of public interest merely on a showing that others may thereby be persuaded to take action inconsistent with its interests. . . . The danger of injury to an industrial concern is neither

so serious nor so imminent as to justify the sweeping proscription of freedom of discussion embodied in § 3448."

In *Thomas v. Collins*, 323 U.S. 516, 527, the Supreme Court noted that free speech cannot be stultified by limiting it to communications which do not tend to result in action.

"'Free trade in ideas' means free trade in the opportunity to persuade to action, not merely to describe facts. . . . Indeed, the whole history of the problem shows it is to the end of preventing action that repression is primarily directed and to preserving the right to urge it that the protections are given."

In the *Swing* case, where the state sought to justify the ban on picketing on exactly the same grounds respondent seeks to justify the ban here, i.e., to protect a "neutral" employer against "interference with his business," the Court disposed of the contention by saying (312 U.S. at 326):

"Communication by such employees (strangers to the employer) of the facts of a dispute, deemed by them to be relevant to their interests, can no more be barred by concern for the economic interests against which they are seeking to enlist public opinion than could the utterance protected in *Thornhill's* case." (Emphasis supplied.)

Finally, in the *Wohl* case, *supra*, the Supreme Court held that economic injury resulting to non-union bakery drivers, to manufacturing bakers, and to retailers who purchased bread from the non-union drivers was "no substantial evil of such magnitude as to mark a limit to free speech."

The cases discussed above show that the economic consequences of picketing justify its restriction only where picketing is used against an enterprise which, in the light of economic realities, is totally outside the context of the labor dispute. Restrictions upon peaceful picketing within the area of economic conflict which the Supreme Court has held it beyond the power of government to limit can be

justified, if at all, only by showing that such picketing gives rise to grave and imminent dangers of substantial evil to the public interest. *Thornhill's case, supra; Thomas v. Collins, supra; Wohl case, supra.*

The foregoing discussion is also relevant to the question of whether a state court can attempt to judge the merit or lack of merit, the economic justification or lack of justification in any particular demands of a labor organization, assuming that such demands or the granting of them would not contravene any valid state law and assuming that such demands, as in the present cases, are reasonably related to the establishment of wages, hours, conditions of employment or other traditional union objectives. To say that in the instant cases the mere pronouncement by a state court that a particular economic demand is arbitrary, and that therefore picketing, and presumably striking, to enforce such demand can be enjoined (in this connection note the statement of the trial judge in Case No. 309 (R. 100) that "and I may say in passing that the clause in the working agreement regarding the hours heretofore set out seems to me a fair, just and reasonable one") is not only to impose in the courts a right to suppress the dissemination of information, through peaceful picketing, denied to legislative bodies in such cases as *Thomas v. Collins, supra; American Federation of Labor v. Swing, supra; Bakery & Pastry Drivers v. Wohl, supra*, and *Cafeteria Employees Union v. Angelos, supra*, but further to hearken back to the pre-dawn era of industrial relations when striking, picketing and the very formation of labor unions were enjoined by the courts as inherently evil or conspiratorial.

Entirely aside from any of the free speech aspects of peaceful picketing, it would appear that suppression or prohibition of the right, as other rights protected under the Fourteenth Amendment even though not under the First, must rest at least upon legislative determination under the rational basis test. Otherwise, constitutional pro-

tections would be subject to the whims and caprices of individual judges framing judgments upon their individual predilections and preconceptions. See *Bridges v. California*, 314 U.S. 252, at 260, where this Court said: "... the problem is different where 'a judgment is based on a common law concept of the most general and undefined nature' [rather than when the judgment comes] ... encased in the armor wrought by prior legislative deliberation."

It is clear that, if the decisions of the Washington Supreme Court in Cases Nos. 309 and 364 are sustained, then there is no principle of constitutional law to prevent any court anywhere from holding any strike or picketing in any traditional labor dispute illegal merely because such strike or picketing is effective or merely because, in the particular court's judgment, a particular economic demand appears arbitrary, although the making of such demand or its granting is in no way prohibited under state law and, in fact, the particular demand, as in the present cases, is a traditional one embodied in union agreements covering a major portion of the industry.

It appears that the fundamental error in the Washington court's reasoning in its decisions in No. 309 and No. 364 lies in its attempt to equate civil rights finding protection under the First Amendment with property rights finding protection solely under the Fourteenth Amendment. Time and again that Court refers to a balancing of the economic interests of the employer with the free speech rights of the union. Such equating of civil and property rights ignores the many determinations of this Court that civil rights specifically protected against legislative abridgment under the First and Fourteenth Amendments are entitled to a higher degree of protection than property rights protected only under the vague contours of the Fourteenth Amendment, and that, if our fundamental liberties are to survive, the state cannot support prohibitions or restrictions of

First Amendment rights simply by a showing of rational basis, but only by a showing of compelling public necessity under the clear and present danger rule. Speaking of the basic liberties of speech and assembly, this Court stated in the *Thomas* case, 323 U.S.*at 530:

“Any attempt to restrict those liberties must be justified by clear public interest, threatened not doubtfully or remotely, but by clear and present danger.”

Since fundamental rights, as distinguished from property rights, are here involved, “Mere legislative preference for one rather than another means for combating substantive evils, therefore, may well prove an inadequate foundation on which to rest regulations which are aimed at or in their operation diminish the effective exercise of rights so necessary to the maintenance of democratic institutions. . . . Abridgment of the liberty of such discussion can be justified only where the clear danger of substantive evils arises under circumstances affording no opportunity to test the merits of ideas by competition for acceptance in the market of public opinion: We hold that the danger of injury to an industrial concern is neither so serious nor so imminent as to justify the sweeping proscription of freedom of discussion embodied in Section 3448.” *Thornhill v. Alabama*, 310 U.S. at 95 and 104. See also *West Virginia v. Barnette*, 319 U.S. 624, at 638.

II

A STATE COURT CANNOT, CONSISTENT WITH THE FIRST AMENDMENT, IMPOSE A BLANKET INJUNCTION AGAINST PEACEFUL PICKETING, REGARDLESS OF THE PURPOSE OF THE PICKETING, IN A SITUATION WHERE ONE PURPOSE IS LAWFUL AND THE OTHER PURPOSE MAY BE UNLAWFUL.

As discussed previously, the Court found in Case No. 364 that the picketing had two objectives: first, to require the employer to observe union hours of operation, and second, to require the employer to employ a union member.²

We have seen in the discussion under Part I of this argument that there is no justification for a prohibition against peaceful picketing in a dispute over hours of operation. Whether there is justification for a prohibition against peaceful picketing in a dispute over employment of union members is a question which is now before this Court in Case No. 449 (*Gazzam v. Building Service Employees International Union, et al., supra*). While we support the position of the petitioners in Case No. 449, we will not here attempt to elaborate upon the very able brief presented by counsel for petitioners therein. For the purpose of the instant cases and particularly Case No. 364, we can assume, without of course agreeing, that it has somehow been made unlawful

²While the State Supreme Court, in Case No. 309, concluded that one of the purposes of the picketing in that case was "indirectly to compel respondents to become members of one or the other, or possibly both, of the two unions" (R. 26), we have seen that such an assumption is not supported by the record and is in direct conflict with the finding of the trial court that:

"They [the unions] did not insist on the plaintiffs becoming members of said Local 882 or the defendant Local No. 309, but merely protested as to their violation of the clause of the agreement above quoted" [the agreement providing for no work on Saturdays, Sundays and holidays] (R. 14).

Further, such a conclusion is inconsistent with an earlier statement of the Court in its same opinion that the substance of the conversation between the union representatives and the automobile dealer was that the automobile dealer would have to comply with the union-prescribed days of operation or be subjected to economic reprisals (R. 22).

by a state statute for an employer to require an employee to become a member of a union, and that accordingly, under the principles of the *Giboney* case, *supra*, picketing to require an employer to employ union members in the face of such state law can be enjoined.³ Nevertheless, it is submitted that the blanket injunction in Case No. 364, broadly prohibiting any and all picketing "in any manner" and regardless of purpose, impairs rights protected under the First Amendment and must either be dissolved or amended so as to permit peaceful picketing in so far as the purpose may be other than to require the employment of union labor. For obviously, the blanket injunction sweeps within its broad ambit both the legal and the illegal, the licit and the illicit. It has been affirmed on numerous occasions by this Court that, where First Amendment freedoms are concerned, allowable restrictions thereon must be narrowly drawn so as to meet the precise evils the state may be permitted to proscribe and so as to leave unimpaired the right of persons to exercise such freedoms for purposes and for objectives which the state has not proscribed and which are otherwise allowable. See *Cantwell v. Connecticut*, 310 U.S. 296; *Thornhill v. Alabama*, *supra*; *Schneider v. State*, 308 U.S. 147; *DeJonge v. Oregon*, 299 U.S. 353; *Saia v. New York*, 334 U.S. 558; *Winters v. New York*, 333 U.S. 507. See in this connection the dissenting opinion in *United States v. C.I.O.*, 335 U.S. 106, at 153, where it is stated:

"Vagueness and uncertainty so vast and all-pervasive seeking to restrict or delimit First Amendment freedoms are wholly at war with long-established constitutional principles surrounding their delimitation.

³This is not to admit or even to assume that peaceful picketing for the purpose of calling to the attention of the public the fact that a firm is not employing union labor or observing union conditions (but without making any request upon the employer that he enter into union-shop agreements and discharge non-union employees) and for the purpose of soliciting those sympathetic to the principles of organized labor not to patronize the employer in question, could, under the principles of the *Giboney* case or any other case be enjoined.

They measure up neither to the requirement of narrow drafting to meet the precise evil sought to be curbed nor to the one that conduct proscribed must be defined with sufficient specificity not to blanket large areas of unforbidden conduct with doubt and uncertainty of coverage."

Here, as in the *Thornhill* case, 310 U.S. at 97, is a prohibition "which does not aim specifically at evils within the allowable area of State control but, on the contrary, sweeps within its ambit other activities that in ordinary circumstances constitute an exercise of freedom of speech or of the press." It is obvious, then, that the broad and indiscriminate prohibitions against peaceful picketing in Case No. 364 deprive or previously restrain petitioners in the exercise of rights protected under the First Amendment as safeguarded against invasion by the state under the Fourteenth, and must be stricken or amended.

Conclusion

A single picket, in the one case carrying a sign stating simply that the employer is unfair to organized labor, and in the other case carrying a sign admonishing the public to look for the union-shop card, has been enjoined from patrolling the premises of an automobile dealer in a traditional labor dispute over whether the employer shall operate on Saturdays, Sundays and holidays, union agreements covering a major portion of the area all specifying that dealers shall not operate on such days. The picketing was entirely peaceful, nothing in the laws of the state prevented the automobile dealer from agreeing, as had other automobile dealers in the area, to operate only on the prescribed days, and there is no showing or claim that the picketing gave rise to any clear and present danger to any public interest, the employer with whom the immediate dispute existed alone suffering economic loss. It is respectfully submitted that under the foregoing circumstances such picketing cannot

be prohibited if freedom of communication in labor disputes is to survive and if the principles announced in *Thornhill's* case are to have any meaning.

Respectfully submitted,

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CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

October Term, 1949

— No. 309 —

INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN AND HELPERS
UNION, LOCAL 309, DICK KLINGE, Its Business
Agent, and MEL ANDREWS, Its Secretary,
Petitioners,

vs.

A. E. HANKE, L. J. HANKE, R. R. HANKE and
R. M. HANKE, Copartner, Doing Business Un-
der the Name and Style of ATLAS AUTO REBUILD,
Respondents.

— No. 364 —

AUTOMOBILE DRIVERS AND DEMONSTRATORS LOCAL
UNION No. 882, RALPH REINERTSEN, its Busi-
ness Agent, and J. J. ROHAN, Its Secretary,
Petitioners,

vs.

GEORGE E. CLINE, *Respondent.*

ON WRITS OF CERTIORARI TO THE SUPREME COURT OF
THE STATE OF WASHINGTON

PETITION FOR REHEARING

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Supreme Court of the United States

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CONSTITUTION*Page*

United States Constitution:

First Amendment 11

Fourteenth Amendment 5, 9, 11

Supreme Court of the United States

October Term, 1949

— No. 309 —

INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN AND HELPERS
UNION, LOCAL 309, DICK KLINGE, Its Business
Agent, and MEL ANDREWS, Its Secretary,
Petitioners,

vs.

A. E. HANKE, L. J. HANKE, R. R. HANKE and
R. M. HANKE, Copartner, Doing Business Un-
der the Name and Style of ATLAS AUTO REBUILD,
Respondents.

— No. 364 —

AUTOMOBILE DRIVERS AND DEMONSTRATORS LOCAL
UNION No. 882, RALPH REINERTSEN, its Busi-
ness Agent, and J. J. ROHAN, Its Secretary,
Petitioners,

vs.

GEORGE E. CLINE, *Respondent.*

ON WRITS OF CERTIORARI TO THE SUPREME COURT OF
THE STATE OF WASHINGTON

PETITION FOR REHEARING

To the Supreme Court of the United States and The
Honorable Justices Thereof:

The petitioners in these two cases, which were “dis-
posed of” in a single opinion, respectfully apply for a
rehearing. The opinion of the court was filed May 8,
1950, and, together with the dissenting opinions, is
printed in the appendix hereto.

Rehearing and reconsideration is sought because it is quite generally believed by lawyers actively engaged in the practice and specializing in labor law that the opinion of the court, particularly when considered in the light of the dissenting opinions, has completely unsettled all fixed notions concerning the right to picket as a means of publicity in industrial controversies, and the right of the several states to limit and confine the scope of the Fourteenth Amendment.

As we understand the language of the majority opinion, the court has very definitely repudiated the "Senn doctrine," which the court has heretofore consistently applied from *Thornhill's* case, 310 U.S. 88, to *Angelos*, 320 U.S. 293, and has abruptly embarked upon a new construction of the Fourteenth Amendment which, if followed to its logical conclusion, would invest the county judges and the courts of the forty-eight states with practically unlimited power to govern by injunction—a power which the Congress of the United States, after many years of bitter struggle, took away from the inferior Federal courts. As bluntly stated by Mr. Justice Minton in his dissent, in which Mr. Justice Reed joined,

"The outlawing of picketing for all purposes is permitted the State of Washington by the upholding of these broad decrees. *No distinction is made between what is legitimate picketing and what is abusive picketing.*" (Emphasis supplied)

And what the courts of the State of Washington are permitted to do today all the courts of the forty-eight states may do tomorrow.

Washington, by judicial policy contrary to the

crystal clear language of the state's Labor Disputes Act,¹ forbids peaceful picketing by members of labor unions, for any purpose or object, in the absence of an immediate employer-employee dispute. The decisions of the Supreme Court of Washington which established this policy, commencing in 1935, are cited and reviewed by that court in *Gazzam v. Building Service Employees International Union, etc.*, 29 Wn. (2d) 488, 188 P.(2d) 97, which this court affirmed (on the same day the cases at bar were decided) *sub nom Building Service Employees Union v. Gazzam* No. 449. In that case the Washington court had held the picketing involved unlawful for two reasons:

"We hold that the acts of respondents, in so far as the picketing was concerned, were coercive—first, because they violated the provisions of Rem. Rev. Stat. (Sup.) Section 7612-2, and, second, because they were in violation of the rules of common law as announced in the cases just approved." (*Gazzam* case, No. 449—R. 24)

And, under these circumstances, that court further held that the decisions of this court in the *Swing*, *Wohl* and *Angelos* cases, construing the Fourteenth Amendment, were not controlling (*Gazzam* case, No. 449—R. 21, 24-25). (This court in the *Gazzam* case, No. 449, upheld a narrowly drawn decree restraining picketing for the *first* reason upon which the Washington court had based its decision.)

The decrees in the cases at bar were affirmed by the Washington court on the authority of the *second*

¹Rem. Rev. Stat. (Supp.) Section 7612-13 (Analogue of the Federal Norris-LaGuardia Act).

branch of its holding in the *Gazzam* case, namely, that the picketing, although admittedly peaceful, was in violation of the state's common law rules which prohibit picketing for any purpose in the absence of the employer-employee relationship. Obviously, the first branch of its holding in the *Gazzam* case could not apply because no employer or employees are involved in the cases at bar. In the *Hanke* case, No. 309, the Washington court said:

"The factual situation in the case before us bears a close resemblance to that which obtained in the recent case of *Gazzam v. Building Service Employees International Union, Local 262*, reported in 29 Wn.(2d) 488, 188 P.(2d) 97. In fact, it seems to be agreed between the parties herein that, unless that case be now overruled, it is controlling of the case at bar. (R. 23)

* * * * *

"The substance of our holding in the *Gazzam* case, *supra*, is, as was succinctly stated in the first headnote of the opinion, that peaceful picketing of an employer's place of business is not protected by the constitutional guaranty of free speech and is unlawful, *where the employees are not members of the picketing union and the purpose of the picketing is to force the employees to join the union * * **" (R. 26) (Emphasis supplied)

That the picketing was enjoined solely because it violated the common law rules is made doubly clear by what the Washington court said in the *Cline* case, No. 364:

"We are of the opinion that this case is controlled by the principles announced in the *Gaz-*

*zam case, supra, * * *; that respondent did not have in his employ at the time this action was commenced, nor had he ever had in his employ, a member of appellant union." (R. 24) (Emphasis supplied)*

In each of these cases the respondents pleaded in their complaints, in substance, that they employed no members of the union or any employees and, therefore, there was no "labor dispute" (No. 309, R. 1; No. 364, R. 1) and the answer of the petitioners was, that while respondents employed no members of the union there was, nevertheless, a labor dispute and that the picketing to publicize the facts of that dispute was protected by the Fourteenth Amendment (No. 309, R. 7-8; No. 364, R. 10-12). This was the issue, and the only issue, which the parties made in the courts below, and, as noted above, in enjoining the picketing both courts below applied common law rules or judicial policy above mentioned. Thus in the *Hanke* case the Supreme Court of Washington said:

"It will be borne in mind that, at the time the picketing was started by the appellants, the respondents had no hired help, but themselves did all the work connected with the operation of their business; that no member of their partnership was a member of either Local 309 or Local 882." (R. 23)

And in the *Cline* case:

"Respondent at no time has had in his employ any member of appellant union (R. 22). * * *

"We are of the opinion that the testimony is undisputed that at the time this action was commenced, at which time respondent's place of busi-

ness was being picketed by appellant union, respondent was not a member of appellant union; * * * that respondent did not have in his employ at the time this action was commenced, nor had he ever had in his employ, a member of appellant union." (R. 24)

This, we submit, is the "gloss" of the Supreme Court of Washington which, when read with the decrees, conclusively demonstrates that the picketing was enjoined only because respondents did not employ any member of the Union.²

There has never been and it was not contended in either of these cases that there was in the State of Washington "a policy in favor of self-employers," exempting them from peaceful picketing by members of labor unions. Furthermore, the Washington Supreme Court did not say in either of its opinions in these cases that there was such a policy. It has been gratuitously attributed to the State of Washington by the opinion of the Supreme Court of the United States—an opinion in which only four of the Justices concur, Mr. Justice Clark concurring only in the result.

We petitioned this Court, in good faith, to review these cases relying on the prior holdings of the Court that "members of a union might, without special statutory authorization by a State, make known the facts of a labor dispute, for freedom of speech is guaranteed by the Federal constitution." (*Senn v. Tile Layers Protective Union*, 301 U.S. 468); that "in the

²This point is fully argued and the decisions of the state court analyzed and quoted in our reply brief in the *Cline* case, No. 364, at pages 1-12.

circumstances of our times the dissemination of information concerning the facts of a labor dispute must be regarded as within the area of free discussion that is guaranteed by the Constitution" (*Thornhill's Case*, 310 U.S. 88, 102); that "peaceful picketing is the workingman's means of communication" (*Drivers Union v. Meadowmoor Co.*, 312 U.S. 287, 293); that "the scope of the Fourteenth Amendment is not confined by the notion of a particular state regarding the wise limits of an injunction in an industrial dispute, whether those limits be defined by statute or by the *judicial organ of the state*," that "a state can not exclude workingmen from peacefully exercising the right of free communication by drawing the circle of economic competition between employers and workers so small as to contain only an employer and those directly employed by him," that the right to peacefully picket "cannot therefore be mutilated by denying it to workers, in a dispute with an employer, even though they are not in his employ," that communication by members of a union of "the facts of a dispute, deemed by them to be relevant to their interests," can not "be barred because of concern for the economic interests against which they are seeking to enlist public opinion" (*American Federation of Labor v. Swing*, 312 U.S. 321, 326); that "one need not be in a 'labor dispute' as defined by state law to have a right under the Fourteenth Amendment to express a grievance in a labor matter by publication unattended by violence, coercion or conduct otherwise unlawful or oppressive" (*Bakery Drivers v. Wohl*, 315 U.S. 769, 774), and that all of these rights were guaranteed by the Fourteenth Amendment even when

the controversy was between a union and "self-employers" (*Bakery Drivers v. Wohl, supra, Cafeteria Employees Union v. Angelos*, 320 U.S. 293, 296).

To our consternation, we are now told by specific and general expressions in the opinion of the Court, some of which are not free from ambiguity, that these rights are guaranteed by the Constitution only until a state by judicial fiat adopts or declares "a policy in favor of self-employers" (Opinion, page 10, Appendix hereto). The *Swing*, *Wohl* and *Angelos* cases are brushed aside in a single sentence:

"In those cases we held only that a State could not proscribe picketing merely by setting artificial bounds, unreal in the light of modern circumstances, to what constitutes an industrial relationship or a labor dispute." (Citing as authority a Harvard law professor) (Opinion, page 10, Appendix)

We venture to say that the bar, like the dissenting Justices, did not understand such to be the holding of the court in those cases. This sentence, when read in context and with other general expressions in the opinion, is open to the construction that it is for the State courts to determine for themselves in each case what constitutes "artificial bounds, unreal in the light of modern circumstances." Does this expression mean, contrary to the holding of the court in the *Swing* case, that "the scope of the Fourteenth Amendment IS * * * confined by the notion of a particular state regarding the wise limits of an injunction in an industrial dispute, whether those limits be defined by statute or by the judicial organ of the state?" Other expressions in the opinion indicate that it does: For example, at

page 5 of the opinion we are told that the State courts have the power "to set the limits of permissible contest open to industrial combatants," but, while their judgment in setting the limits or "striking a balance" is subject to the limitations of the Fourteenth Amendment such a judgment when it reaches this Court bears "a weighty title of respect." The State courts, with justification, will undoubtedly construe this to mean that their judgment with respect to social-economic policies in this field will seldom, if ever, be disturbed by the Supreme Court of the United States. This is supported by the following sentence of the opinion (page 5):

"These two cases emphasize the nature of a problem that is presented by our duty of sitting in judgment on a State's judgment in striking the balance that has to be struck *when a State decides not to keep hands off these industrial contests.*" (Emphasis supplied)

And by these expressions on the following page:

"Whether to prefer the union or a self-employer in such a situation, or to seek partial recognition of both interests, and, if so, by what means to secure such accommodation, obviously presents to a State serious problems. There are no sure answers, and the best available solution is likely to be experimental and tentative, and always subject to the control of the popular will. * * * Washington here concluded that even though the relief afforded Hanks and Cline entailed restrictions upon communication that the union sought to convey through picketing, it was more important to safeguard the value which the state placed upon self-employers * * *." (Opinion page 7, Appendix)

Indeed, this last may be construed as meaning, and the state courts will undoubtedly so construe it, that the Washington court having concluded that it was more "equitable" to enjoin the picketing than to permit respondents to sustain an economic loss, the injunctions did not infringe the Fourteenth Amendment.

Finally, on page 8 of the opinion, the "majority" further says:

"It is not our business even remotely to hint at agreement or disagreement with what has commended itself to the State of Washington, or even to intimate that all the relevant considerations are exposed in the conclusions reached by the Washington court. They seldom are in this field, so deceptive and opaque are the elements of these problems. That is precisely what is meant by recognizing that they are within the domain of a State's public policy. Because there is lack of agreement as to the relevant factors and divergent interpretations of their meaning, as well as differences in assessing what is the short and what is the long view, the clash of fact and opinion should be resolved by the democratic process and not by the judicial sword."

These general expressions all add up to this: The Supreme Court of the United States will not interfere with any policy which may commend itself to the courts of the forty-eight states even though such policy deprives workingmen of rights guaranteed by the First and Fourteenth Amendments. If the citizens of the several states disapprove the policies which their judges declare, the remedy is the ballot box and not

the protection of the First and Fourteenth Amendments.

At several places in the opinion it is inferred that the picketing involved in these two cases was for an unlawful purpose or object. Near the top of page 10 it is said:

"In any event, it is not for this court to question the State's judgment in regulating only where an *evil* seems to it most conspicuous * * *. Indeed in *Wohl* this court expressly noted that the State courts had not found that the picketing there condemned was for a defined *unlawful object*. * * * So read, the injunctions (here) are directed solely against picketing for the *ends defined* by the parties before the Washington court and this court." (Emphasis supplied)

Neither the Washington court nor this Court informs us what these evils or unlawful objects are. Is the picketing of self-employers in an industrial controversy of itself, regardless of purpose, an evil or unlawful object? Or is such picketing evil or unlawful because its purpose was to withdraw from self-employers union patronage and thereby persuade them to observe union hours? Or was the picketing in these cases unlawful because the pickets noted the automobile license numbers of respondent's patrons, and in a single instance one of respondents' driveways was obstructed by the picket? Or was the picketing unlawful because it was effective? The opinion sheds no light. The bar and the State courts are left to speculate and surmise.

Further adding to the confusion the majority opinion says in its concluding sentences:

"Our affirmance of these injunctions is in conformity with the reading derived from the Washington court's opinions. If astuteness may discover argumentative excess in the scope of the injunctions beyond what we constitutionally justify by this opinion, it will be open to petitioners to raise the matter, which they have not raised here, when the cases on remand reach the Washington court."

We repeat again the injunctions here are sweeping in character—they prohibit all picketing of respondents' places of business for all purposes. They are identical in language:

"ORDERED, ADJUDGED AND DECREED that the defendants, and each of them, be and they are hereby permanently restrained and enjoined from in any manner picketing the plaintiffs' place of business." (Case No. 309, R. 17; Case No. 364, R. 16)

Because they are unlimited in "scope" we are at a loss to understand what the majority "constitutionally justify by this opinion."

This no doubt prompted Mr. Justice Minton to say in his dissent:

"The decrees entered in the instant cases were not tailored to meet the evils of threats and intimidation as *Cafeteria Employees Union v. Angelos*, 320 U.S. 293, 295, indicates they might have been; * * * (page 1)

"The outlawing of picketing for all purposes is permitted the State of Washington by the upholding of these broad decrees. No distinction is made between what is legitimate picketing and what is abusive picketing. *Here we have no at-*

tempt by the state through its courts to restrict conduct justifiably found to be an abusive exercise of the right to picket.' Angelos case, 320 U.S. at 295." (page 4) (Emphasis supplied)

We have not overlooked the question which the majority opinion says is presented:

"Does the Fourteenth Amendment of the Constitution bar a State from use of the injunction to prohibit picketing of a business conducted by the owner himself without employees in order to secure compliance by him with a demand to become a union shop?" (Opinion page 1, Appendix) (Emphasis supplied)

If by "demand to become a union shop" is meant that the picketing was conducted in order to secure compliance with union hours of work in both cases and in the *Cline* case, No. 364, to compel him to employ a union member, the statement of the question is correct. However, the statement which the Supreme Court of Washington made in the *Hanke* case, No. 309, concerning this matter is not true. That court said:

"The purpose of the picketing in the present instance was (1), indirectly, to compel the respondents to become members of one or the other, or possibly both, of the unions above mentioned; and (2), directly, to coerce the respondents to enter into an agreement under which they would carry on their business only during those hours and days arbitrarily fixed by the Automobile Salesmen's Union, Local 882."

As pointed out in the brief of the American Federation of Labor as *amicus curiae* (p. 4) this statement that it was indirectly the purpose of appellants to com-

pel respondents to become members of the union is a gratuitous assumption not based on anything in the record and directly contrary to the unchallenged specific finding of the trial court that the union "did not insist on the plaintiffs becoming members of said Local 882 or the defendant Local No. 309" (R. 14). Accordingly, this assumption of the Supreme Court of Washington concerning the purpose of the picketing must be disregarded. Such findings and statements have been characterized by this court as "spurious findings of fact" and as "insubstantial findings of fact screening reality," designed to defeat the guaranties of the Bill of Rights. (*Wagon Drivers v. Meadowmoor*, 312 U.S. 287, 293, 299). But viewing this matter, for the sake of the argument, as the Supreme Court of Washington viewed it, in what respect do these cases differ from the *Angelos* case? There, as here, the plaintiffs were self-employers—copartners—who operated a cafeteria without the assistance of outside help. The object of the picketing, as this court found, was to "organize" plaintiffs' cafeteria, and this was the only object of the picketing in the cases at bar. The Court of Appeals of New York had assigned the same reasons as did the Supreme Court of Washington for enjoining the picketing. We quote from the New York court's opinion:

"It has been found by the lower courts that the picketing of the World Cafeteria was at all times orderly and peaceful and that no acts of violence had been threatened or committed by the defendant union. The defendants had the constitutional right accurately and truthfully and without violence, force or coercion, or conduct otherwise un-

lawful or oppressive to make their grievances known to the public. *Wohl v. Bakery and Pastry Drivers and Helpers Local 802, of International Brotherhood of Teamsters, supra.* But a citizen is not required to tolerate peaceful picketing accompanied by untruthful representations, interference with his business or coercive conduct designed to injure or destroy his business *whether a labor dispute exists or not.* *Busch Jewelry Co. v. United Retail Employees Union, Local 830, 281 N.Y. 150, 22 N.E.2d 320, 124 A.L.R. 744; Wohl v. Bakery and Pastry Drivers and Helpers Local 802, of International Brotherhood of Teamsters, supra.* Unlike the record in the *Wohl* case, there are findings of fact here to sustain the decree. In this case it has been found that individuals under the control of the defendants have been picketing the plaintiffs' cafeteria, bearing false and misleading signs that tend to create the impression that the plaintiffs are unfair to organized labor and that the pickets were previously employed by the plaintiffs, which representations were false and known by the defendants to be false, since there were no employees at the place of business of the plaintiffs and the plaintiffs were not unfair to organized labor; that such pickets approached prospective customers of the plaintiffs and told them that the plaintiffs' restaurant was giving bad food, and that by patronizing said restaurant they were aiding the cause of Fascism; and that the pickets directed customers about to enter the plaintiffs' place of business to a cafeteria across the street which was a competitor of the plaintiffs. *By no authoritative decision has it been held that such conduct is not subject to judicial restraint. On the contrary, unlawful and coercive conduct will*

be enjoined where it has been found that such conduct has caused damage and will cause irreparable damage if permitted to continue and the party who is so damaged or threatened to be damaged has no adequate remedy at law. Busch Jewelry Co. v. United Retail Employees Union, Local 830, supra, 281 N.Y. at page 156, 22 N.E. 2d 320, 124 A.L.R. 744." (Angelos v. Mesevich, 289 N.Y. 498, 46 N.E.2d 903, 905-6) (Emphasis supplied)

It will be noted that the Washington court, like the New York court, was chiefly concerned with property rights and the economic welfare of the "self-employers," wholly ignoring the interests of the union members who were in competition with them in the same industry. The Washington court said:

"We do not believe that the United States Supreme Court has ever held that the right of free speech is an absolute right, to be protected regardless of the deleterious effect so produced in regard to other interests also protected by the Federal constitution; nor do we believe that the United States Supreme Court has ever said that a state is without power to abridge this right where such a course is necessary to protect property rights and is in the general interests of the community." (Case No. 309, R. 27)

Reversing the judgment of the Court of Appeals of New York in the *Angelos* case, *supra*, this court disregarded the economic considerations which the New York court thought justified the injunction, and applied the "Senn Doctrine," saying in part:

"That the picketing under review was peaceful was not questioned. And to use loose language or undefined slogans that are part of the conven-

tional give-and-take in our economic and political controversies—like ‘unfair’ or ‘fascist’—is not to falsify facts. In a setting like the present, continuing representations unquestionably false and acts of coercion going beyond the mere influence exerted by the fact of picketing, are of course not constitutional prerogatives. *But here we have no attempt by the state through its courts to restrict conduct justifiably found to be an abusive exercise of the right to picket. We have before us a prohibition as unrestricted as that which we found to transgress state power in American Federation of Labor v. Swing, 312 U.S. 321, 85 L. ed. 855, 61 S. Ct. 568, supra.”* (320 U.S. 293, 295; Emphasis supplied)

While the Washington court in the *Hanke* case made a strong effort to distinguish the *Wohl* case (R. 29-30), it made no attempt whatever to distinguish the *Angelos* case, although Judge Robinson, dissenting, stated that the two cases were indistinguishable (R. 33). Nor does this court tell us how these cases differ from the *Angelos* case. The court, we submit, should either reaffirm and here apply the principles of the *Angelos* case or overrule it. This should be done for reasons forcefully stated by Mr. Justice Frankfurter in the recent case of *United States v. Rabinowitz*, No. 293, decided February 20, 1950, wherein he said:

“We are asked to overrule decisions based on a long course of prior unanimous decisions, drawn from history and legislative experience. In overruling *Trupiano* we overrule the underlying principle of a whole series of recent cases: *United States v. Di Re*, 332 U.S. 581, 92 L. ed. 210, 68 S. Ct. 222; *Johnson v. United States*, 333 U.S. 10, 92 L. ed. 436, 68 S. Ct. 367; *McDon-*

ald v. United States, 335 U.S. 451, 93 L. ed. 153, 69 S. Ct. 184, based on the earlier cases. For these cases ought not to be allowed to remain as derelicts on the stream of the law, if we overrule *Trupiano*. These are not outmoded decisions eroded by time. Even under normal circumstances, the Court ought not to overrule such a series of decisions where no mischief flowing from them has been made manifest. Respect for continuity in law, where reasons for change are wanting, alone requires adherence to *Trupiano* and the other decisions. Especially ought the Court not needlessly reenforce the instabilities of our day by giving fair ground for the belief that Law is the expression of chance—for instance, of unexpected changes in the Court's composition and the contingencies in the choice of successors."

The petitioners firmly believe that the principles of the *Angelos* case, which were approved by a unanimous court, should be applied here and the judgments reversed. But whether or not these judgments are permitted to stand is of relatively small importance. The vitally important thing is that the opinion of the court should be reconsidered and clarified with respect to the matters we have attempted to point out, in order that the courts and the bar may reasonably understand how far the power of the state courts extends "to set the limits of permissible contest open to industrial combatants" when injunctions are sought against peaceful picketing. The courts and the bar should know with reasonable certainty what constitutes "artificial bounds" and what are real bounds "in the light of modern circumstances." If there were abuses in these

cases which warranted injunctive relief they should be pointed out in order that organized labor may govern itself accordingly. Otherwise the right of workmen to peacefully picket in industrial disputes will depend entirely upon the varying theories and economic prejudices of the state courts, and this inevitably will result in years of confusion and uncertainty of the law, attended by a flood of expensive litigation and applications to this Court for writs of certiorari.

The majority opinion, as already noted, has the approval of only four of the Justices. Mr. Justice Clark concurred only in the result, Mr. Justice Douglas did not participate and three Justices dissented. Under these circumstances and because it is the opinion of practicing lawyers specializing in labor law that the doctrine laid down in the opinion is a radical departure from the past, a rehearing should be granted and the cases reconsidered by the entire Court.

Respectfully submitted,

SAMUEL B. BASSETT,
JOHN GEISNESS,

Attorneys for Petitioners.

Dated this 26th day of May, 1950.

CERTIFICATE OF COUNSEL

I hereby certify that I have examined the foregoing petition for rehearing; that in my opinion the petition is well founded and that it is presented in good faith and not for delay.

SAMUEL B. BASSETT,
Attorney for Petitioners.

APPENDIX

SUPREME COURT OF THE UNITED STATES

NOS. 309 AND 364.—OCTOBER TERM, 1949.

International Brotherhood of
Teamsters, Chauffeurs,
Warehousemen and Helpers
Union, Local 309, et al., Pe-
titioners,

309 v.

A. E. Hanke, L. J. Hanke, R.
R. Hanke, and R. M. Hanke,
Copartners, D. B. A. Atlas
Auto Rebuild.

On Writs of Certiorari
to the Supreme Court
of the State of Wash-
ington.

Automobile Drivers and Dem-
onstrators Local Union No.
882, Ralph Reinertsen, Its
Business Agent, et al., Peti-
tioners,

364 v.

George E. Cline.

[May 8, 1950.]

MR. JUSTICE FRANKFURTER announced the judgment of the Court and an opinion in which THE CHIEF JUSTICE, MR. JUSTICE JACKSON and MR. JUSTICE BURTON concurred.

These two cases raise the same issues and are therefore disposed of in single opinion. The question is this: Does the Fourteenth Amendment of the Constitution bar a State from use of the injunction to prohibit the picketing of a business conducted by the owner himself without employees in order to secure compliance by him with a demand to become a union shop?

In No. 309, respondents A. E. Hanke and his three sons, as copartners, engaged in the business of repairing automobiles, dispensing gasoline and automobile

accessories, and selling used automobiles in Seattle. They conducted their entire enterprise themselves, without any employees. At the time the senior Hanke purchased the business in June, 1946, which had theretofore been conducted as a union shop, he became a member of Local 309 of the International Brotherhood of Teamsters, which includes in its membership persons employed and engaged in the gasoline service station business in Seattle. Accordingly, the Hanks continued to display in their show window the union shop card of their predecessor. Local 309 also included the Hanks' business in the list of firms for which it urged patronage in advertisements published in the Washington organ of the International Brotherhood of Teamsters, distributed weekly to members. As a result of the use of the union shop card and these advertisements, the Hanks received union patronage which they otherwise would not have had.

Automobile Drivers and Demonstrators Local 882, closely affiliated with Local 309 and also chartered by the International Brotherhood of Teamsters, includes in its membership persons engaged in the business of selling used cars and used car salesmen in Seattle. This union negotiated an agreement in 1946 with the Independent Automobile Dealers Association of Seattle, to which the Hanks did not belong, providing that used car lots be closed by 6 p. m. on weekdays and all day on Saturdays, Sundays and eight specified holidays. This agreement was intended to be applicable to 115 used car dealers in Seattle, all except ten of which were self-employers with no employees.

It was the practice of the Hanks to remain open nights, weekends and holidays. In January, 1948, representatives of both Locals called upon the Hanks to urge them to respect the limitation on business hours in the agreement or give up their union shop card. The Hanks refused to consent to abide by the agreement,

claiming that it would be impossible to continue in business and do so, and surrendered the union shop card. The name of the Hanks' business was thereafter omitted from the list published by Local 309 in its advertisements.

Soon afterwards the Local sent a single picket to patrol up and down peacefully in front of the Hanks' business between the hours of 8:30 a. m. and 5 p. m., carrying a "sandwich sign" with the words "Union People Look for the Union Shop Card" and a facsimile of the shop card. The picket also wrote down the automobile license numbers of the Hanks' patrons. As a result of the picketing, the Hanks' business fell off heavily and drivers for supply houses refused to deliver parts and other needed materials. The Hanks had to use their own truck to call for the materials necessary to carry on their business.

To restrain this conduct, the Hanks brought suit against Local 309 and its officers. The trial court granted a permanent injunction against the picketing and awarded the Hanks a judgment of \$250, the sum stipulated by the parties to be the amount of damage occasioned by the picketing. The Supreme Court of Washington affirmed. 207 P.2d 206.

The background in No. 364 is similar. George E. Cline engaged in the used car business in Seattle, performing himself the services of his business here relevant. He was induced by the threat of picketing to join Automobile Drivers Local 882 in 1946, and in that year he also became a member of the Independent Automobile Dealers Association of Seattle which negotiated with Local 882 the agreement as to business hours to which reference has been made.

In August, 1947, Cline advised Local 882 that he did not intend to continue membership in the union and that he was no longer a member of the Independent Automobile Dealers Association. He announced that

he did not consider himself bound by the agreement as to business hours and that he intended to operate on Saturdays. When Cline proceeded to do so Local 882 began to picket his business.

The picketing was conducted peacefully, normally by two pickets who patrolled up and down carrying "sandwich signs" stating that Cline was unfair to the union. The pickets took down the automobile license numbers of Cline's patrons, and when inquiry was made by patrons as to why they were doing so, their reply was: "You'll find out." Because of interference by the pickets with the use of one of Cline's driveways, he was forced to close it to avoid the possibility of one of the pickets being run over. As a result of the picketing, Cline's business fell off and, as in No. 309, drivers for supply houses refused to deliver parts and other needed materials. Cline had to use his own vehicle to call for supplies necessary to carry on the business.

Local 882 reached a new agreement with the Independent Automobile Dealers Association in April, 1948. As a condition to removal of the picket line, the union demanded that Cline agree to keep his business closed after 1 p. m. on Saturdays and to hire a member of the union as a salesman to be compensated at the rate of seven percent of the gross sales regardless of whether they were made by Cline or this employee. Suit by Cline to restrain patrolling of his business resulted in a permanent injunction against the union and its officers—Cline waived his claim for damages—and the Supreme Court of Washington, relying on its decision in the *Hanke* case, affirmed. 207 P.2d 216.

In both these cases we granted certiorari to consider claims of infringement of the right of freedom of speech as guaranteed by the Due Process Clause of the Fourteenth Amendment. 338 U. S. 903.

Here, as in *Hughes v. Superior Court*, ante p. —, we must start with the fact that while picketing has an ingredient of communication it cannot dogmatically be

equated with the constitutionally protected freedom of speech. Our decisions reflect recognition that picketing is "indeed a hybrid." Freund, *On Understanding the Supreme Court* 18 (1949). See also Jaffe, *In Defense of the Supreme Court's Picketing Doctrine*, 41 Mich. L. Rev. 1037 (1943). The effort in the cases has been to strike a balance between the constitutional protection of the element of communication in picketing and "the power of the State to set the limits of permissible contest open to industrial combatants." *Thornhill v. Alabama*, 310 U. S. 88, 104.¹ A State's judgment on striking such a balance is of course subject to the limitations of the Fourteenth Amendment. Embracing as such a judgment does, however, a State's social and economic policies, which in turn depend on knowledge and appraisal of local social and economic factors, such judgment on these matters comes to this Court bearing a weighty title of respect.

These two cases emphasize the nature of a problem that is presented by our duty of sitting in judgment on a State's judgment in striking the balance that has to be struck when a State decides not to keep hands off these industrial contests. Here we have a glaring instance of the interplay of competing social-economic interests and viewpoints. Unions obviously are concerned not to have union standards undermined by non-union shops. This interest penetrates into self-employer shops. On the other hand, some of our profoundest thinkers from Jefferson to Brandeis have stressed the importance to a democratic society of encouraging

¹It is relevant to note that the Alabama statute held unconstitutional in the *Thornhill* case had been construed by the State courts to prohibit picketing without "exceptions based upon either the number of persons engaged in the proscribed activity, the peaceful character of their demeanor, the nature of their dispute with an employer, or the restrained character and accurateness of the terminology used in notifying the public of the facts of the dispute." 310 U. S. at 99.

self-employer economic units as a counter-movement to what are deemed to be the dangers inherent in excessive concentration of economic power. "There is a widespread belief . . . that the true prosperity of our past came not from big business, but through the courage, the energy and the resourcefulness of small men . . . and that only through participation by the many in the responsibilities and determinations of business, can Americans secure the moral and intellectual development which is essential to the maintenance of liberty." Mr. Justice Brandeis, dissenting in *Liggett Co. v. Lee*, 288 U. S. 517, 541, 580.

Whether to prefer the union or a self-employer in such a situation, or to seek partial recognition of both interests, and, if so, by what means to secure such accommodation, obviously presents to a State serious problems. There are no sure answers, and the best available solution is likely to be experimental and tentative, and always subject to the control of the popular will. That the solution of these perplexities is a challenge to wisdom and not a command of the Constitution is the significance of *Senn v. Tile Layers Protective Union*, 301 U. S. 468. Senn, a self-employed tile layer who occasionally hired other tile layers to assist him, was picketed when he refused to yield to the union demand that he no longer work himself at his trade. The Wisconsin court found the situation to be within the State's anti-injunction statute and denied relief. In rejecting the claim that the restriction upon Senn's freedom was a denial of his liberty under the Fourteenth Amendment, this Court held that it lay in the domain of policy for Wisconsin to permit the picketing: "Whether it was wise for the State to permit the unions to do so is a question of its public policy—not our concern." 301 U. S. at 481.

This conclusion was based on the Court's recognition that it was Wisconsin, not the Fourteenth Amendment,

which put such picketing as a "means of publicity on a par with advertisements in the press."² 301 U. S. at 479. If Wisconsin could permit such picketing as a matter of policy it must have been equally free as a matter of policy to choose not to permit it and therefore not to "put this means of publicity on a par with advertisements in the press." If Wisconsin could have deemed it wise to withdraw from the union the permission which this Court found outside the ban of the Fourteenth Amendment, such action by Washington cannot be inside that ban.³

Washington here concluded that even though the relief afforded the Hankes and Cline entailed restriction upon communication that the unions sought to convey through picketing, it was more important to safeguard the value which the State placed upon self-employers, leaving all other channels of communication open to the union. The relatively small interest of the unions considerably influenced the balance that was struck.

The Court said: "In declaring such picketing permissible Wisconsin has put this means of publicity on a par with advertisements in the press." 301 U. S. at 479. To assume that this sentence is to be read as though the picketing was permitted by Wisconsin not as a matter of choice but because the Fourteenth Amendment compelled its allowance is to assume that so careful a writer as Mr. Justice Brandeis, the author of the Court's opinion, meant the above sentence to be read as though it contained the bracketed insertion as follows: "In declaring such picketing permissible Wisconsin [recognized that the Fourteenth Amendment] has put this means of publicity on a par with advertisements in the press." In other words, it is suggested that the bracketed interpolation which Justice Brandeis did not write is to be read into what he did write although thereby its essential meaning would be altered.

Of course, the true significance of particular phrases in *Senn* appears only when they are examined in their context: "Clearly the means which the statute authorizes—picketing and publicity—are not prohibited by the Fourteenth Amendment. Members of a union might, without special statutory authorization by a State, make known the facts of a labor dispute, for freedom of speech is guaranteed by the Federal Constitution. The State may, in the exercise of its police power, regulate the methods and means of publicity as well as the use of public streets." 301 U. S. at 478.

Of 115 used car dealers in Seattle maintaining union standards all but ten were self-employers with no employees. "From this fact," so we are informed by the Supreme Court of Washington, "the conclusion seems irresistible that the union's interest in the welfare of a mere handful of members' (of whose working conditions no complaint at all is made) is far outweighed by the interests of individual proprietors and the people of the community as a whole, to the end that little businessmen and property owners shall be free from dictation as to business policy by an outside group having but a relatively small and indirect interest in such policy." 207 P.2d at 213.

We are, needless to say, fully aware of the contentious nature of these views. It is not our business, even remotely to hint at agreement or disagreement with what has commended itself to the State of Washington, or even to intimate that all the relevant considerations are exposed in the conclusions reached by the Washington court. They seldom are in this field, so deceptive and opaque are the elements of these problems. That is precisely what is meant by recognizing that they are within the domain of a State's public policy. Because there is lack of agreement as to the relevant factors and divergent interpretations of their meaning, as well as differences in assessing what is the short and what is the long view, the clash of fact and opinion should be resolved by the democratic process and not by the judicial sword. Invalidation here would mean denial of power to the Congress as well as to the forty-eight States.

It is not for us to pass judgment on cases not now before us. But when one considers that issues not unlike those that are here have been similarly viewed by other States and by the Congress of the United

*See, e. g., *Bautista v. Jones*, 25 Cal. 2d 746, 155 P. 2d 343; *Dinoffria v. International Brotherhood of Teamsters and Chauffeurs*, 331 Ill. App. 129, 72 N. E. 2d 635; *Savcell v. Demers*, 322 Mass. 70, 76 N. E. 2d 12.

States,⁵ we cannot conclude that Washington, in holding the picketing in these cases to be for an unlawful object, has struck a balance so inconsistent with rooted traditions of a free people that it must be found an unconstitutional choice. Mindful as we are that a phase of picketing is communication, we cannot find that Washington has offended the Constitution.

We need not repeat the considerations to which we adverted in *Hughes v. Superior Court* that make it immaterial, in respect to the constitutional issue before us, that the policy of Washington was expressed by its Supreme Court rather than by its legislature. The Fourteenth Amendment leaves the States free to distribute the powers of government as they will between their legislative and judicial branches. *Dreyer v. Illinois*, 187 U. S. 71, 83-84; *Prentis v. Atlantic Coast Line Co.*, 211 U. S. 210, 225. "[R]ights under that amendment turn on the power of the State, no matter by what organ it acts." *Missouri v. Dockery*, 191 U. S. 165, 170-71.

Nor does the Fourteenth Amendment require prohibition by Washington also of voluntary acquiescence in the demands of the union in order that it may choose to prohibit the right to secure submission through picketing. In abstaining from interference with such voluntary agreements a State may rely on self-interest. In any event, it is not for this Court to question a State's judgment in regulating only where an evil seems to it most conspicuous.

What was actually decided in *American Federation*

⁵Section 8 (b) (4) (A) of the Labor Management Relations Act, 1947, makes it an unfair labor practice for a union "to engage in . . . a strike . . . where an object thereof is: (A) forcing or requiring any employer or self-employed person to join any labor or employer organization." 61 Stat. 142, 29 U. S. C. Supp. I § 158 (b) (4) (A). See also §§ 10 (1) and 303 of this Act.

of *Labor v. Swing*, 312 U. S. 321, *Bakery & Pastry Drivers & Helpers Local v. Wohl*, 315 U. S. 769, and *Cafeteria Employees Union v. Angelos*, 320 U. S. 293, does not preclude us from upholding Washington's power to make the choice of policy she has here made. In those cases we held only that a State could not proscribe picketing merely by setting artificial bounds, unreal in the light of modern circumstances, to what constitutes an industrial relationship or a labor dispute.⁶ See Cox, *Some Aspects of the Labor Management Relations Act, 1947*, 61 Harv. L. Rev. 1, 30 (1947). The power of a State to declare a policy in favor of self-employers and to make conduct restrictive of self-employment unlawful was not considered in those cases. Indeed in *Wohl* this Court expressly noted that the State courts had not found that the picketing there condemned was for a defined unlawful object. 315 U. S. at 774.

When an injunction of a State court comes before us it comes not as an independent collocation of words. It is defined and confined by the opinion of the State court. The injunctions in these two cases are to be judged here with all the limitations that are infused into their terms by the opinions of the Washington Supreme Court on the basis of which the judgments below come before us. So read, the injunctions are directed solely against picketing for the ends defined by the parties before the Washington court and this Court. To treat the injunctions otherwise—to treat them, that is, outside the scope of the issues which they represent—is to deal with a case that is not here and was not before the Washington court. In considering an injunc-

⁶As to the Court's duty to restrict general expressions in opinions in earlier cases to their specific context, see *Cohens v. Virginia*, 6 Wheat. 264, 399-400; *Armour & Co. v. Wantock*, 323 U. S. 126, 132-33.

tion against picketing recently, we had occasion to reject a similar claim of infirmity derived not from the record but from unreality. What we then said is pertinent now: "What is before us . . . is not the order as an isolated, self-contained writing but the order with the gloss of the Supreme Court of Wisconsin upon it." *Hotel & Restaurant Employees' International Alliance v. Wisconsin E. R. B.*, 315 U. S. 437, 441. Our affirmance of these injunctions is in conformity with the reading derived from the Washington court's opinions. If astuteness may discover argumentative excess in the scope of the injunctions beyond what we constitutionally justify by this opinion, it will be open to petitioners to raise the matter, which they have not raised here, when the cases on remand reach the Washington court.

Affirmed.

MR. JUSTICE CLARK concurs in the result.

MR. JUSTICE BLACK dissents for substantially the reasons given in his dissent in *Carpenters & Joiners Union v. Ritter's Cafe*, 315 U. S. 722, 729-32.

MR. JUSTICE DOUGLAS took no part in the consideration or decision of these cases.

SUPREME COURT OF THE UNITED STATES

Nos. 309 AND 364.—OCTOBER TERM, 1949.

International Brotherhood of
Teamsters, Chauffeurs,
Warehousemen and Helpers
Union, Local 309, et al., Pe-
titioners,

309 v.

A. E. Hanke, L. J. Hanke, R.
R. Hanke, and R. M. Hanke,
Copartners, D B. A. Atlas
Auto Rebuild.

On Writs of Certiorari
to the Supreme Court
of the State of Wash-
ington.

Automobile Drivers and Dem-
onstrators Local Union No.
882, Ralph Reinertsen, Its
Business Agent, et al., Peti-
tioners,

364 v.

George E. Cline.

[May 8, 1950.]

MR. JUSTICE MINTON, with whom MR. JUSTICE REED
joins, dissenting.

Petitioners in each of these cases were "permanently
restrained and enjoined from in any manner picketing"
the places of business of respondents. The picketing
here was peaceful publicity, not enmeshed in a pattern
of violence as was true in *Milk Wagon Drivers Union*
v. Meadowmoor Dairies, 312 U. S. 287; nor was there
violence in the picketing, as in *Hotel & Restaurant Em-
ployees' International Alliance v. Wisconsin E. R. B.*,
315 U. S. 437. The decrees entered in the instant cases
were not tailored to meet the evils of threats and in-
timidation as *Cafeteria Employees Union v. Angelos*,

320 U. S. 293, 295, indicates they might have been; nor were they limited to restraint of picketing for the purpose of forcing the person picketed to violate the law and public policy of the state, as were the decrees in *Giboney v. Empire Storage & Ice Co.*, 336 U. S. 490, and *Building Service Employees Union v. Gazzam*, No. 449, this day decided. The abuses of picketing involved in the above cases were held by this Court not to be protected by the Fourteenth Amendment from state restraint.

It seems equally clear to me that peaceful picketing which is used properly as an instrument of publicity has been held by this Court in *Thornhill v. Alabama*, 310 U. S. 88; *Carlson v. California*, 310 U. S. 106; *American Federation of Labor v. Swing*, 312 U. S. 321; *Bakery & Pastry Drivers & Helpers Local v. Wohl*, 315 U. S. 769; and *Cafeteria Employees Union v. Angelos*, 320 U. S. 293, to be protected by the Fourteenth Amendment. I do not understand that in the last three mentioned cases this Court, as the majority in its opinion says, "held only that a State could not proscribe picketing merely by setting artificial bounds, unreal in the light of modern circumstances, to what constitutes an industrial relationship or a labor dispute." If the states may set bounds, it is not for this Court to say where they shall be set, unless the setting violates some provision of the Federal Constitution. I understand the above cases to have found violations of the federal constitutional guarantee of freedom of speech, and the picketing could not be restrained because to do so would violate the right of free speech and publicity. This view is plainly stated by this Court in *Cafeteria Employees Union v. Angelos*, 320 U. S. at 295:

"In *Senn v. Tile Layers Union*, 301 U. S. 468, this Court ruled that members of a union might, 'without special statutory authorization by a State,

make known the facts of a labor dispute, for freedom of speech is guaranteed by the Federal Constitution.' 301 U. S. at 478. Later cases applied the *Senn* doctrine by enforcing the right of workers to state their case and to appeal for public support in an orderly and peaceful manner regardless of the area of immunity as defined by state policy. *A. F. of L. v. Swing*, 312 U. S. 321; *Bakery Drivers Local v. Wohl*, 315 U. S. 769.*

All the recent cases of this Court upholding picketing, from *Thornhill* to *Angelos*, have done so on the view that "peaceful picketing and truthful publicity" (see 320 U. S. at 295) is protected by the guaranty of free speech. This view stems from Mr. Justice Brandeis' statement in *Senn* that "Members of a union might, without special statutory authorization by a State, make known the facts of a labor dispute, for freedom of speech is guaranteed by the Federal Constitution." 301 U. S. 468, 478. In that case Justice Brandeis was dealing with action of Wisconsin that permitted picketing by a labor union of a one-man shop. Of course, as long as Wisconsin allowed picketing, there was no interference with freedom of expression. By permitting picketing the State was allowing the expression found in "peaceful picketing and truthful publicity." There was in that posture of the case no question of conflict with the right of free speech. But because Wisconsin could permit picketing, and not thereby encroach upon freedom of speech, it does not follow that it could forbid like picketing; for that might involve conflict with the Fourteenth Amendment. It seems to me that Justice Brandeis, foreseeing the problem of the converse, made the statement above quoted in order to indicate that picketing could be protected by the free speech guaranty of the Federal Constitution.

4 TEAMSTERS v. HANKE.

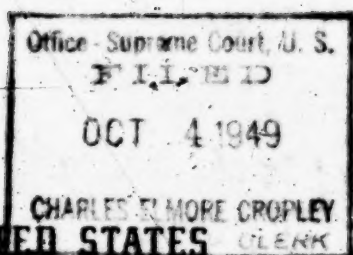
Whether or not that is what Justice Brandeis meant, I think this Court has accepted that view, from *Thornhill* to *Angelos*. It seems to me too late now to deny that those cases were rooted in the free speech doctrine. I think we should not decide the instant cases in a manner so alien to the basis of prior decisions.

The outlawing of picketing for all purposes is permitted the State of Washington by the upholding of these broad decrees. No distinction is made between what is legitimate picketing and what is abusive picketing. "[H]ere we have no attempt by the state through its courts to restrict conduct justifiably found to be an abusive exercise of the right to picket." *Angelos* case, 320 U. S. at 295.

Because the decrees here are not directed at any abuse of picketing but at all picketing, I think to sustain them is contrary to our prior holdings, founded as they are in the doctrine that "peaceful picketing and truthful publicity" is protected by the constitutional guaranty of the right of free speech. I recognize that picketing is more than speech. That is why I think an abuse of picketing may lead to a forfeiture of the protection of free speech. Tested by the philosophy of prior decisions, no such forfeiture is justified here.

I would reverse the judgments in these two cases.

LIBRARY
SUPREME COURT, U. S.



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 364

**AUTOMOBILE DRIVERS AND DEMONSTRATORS
LOCAL UNION NO. 882, RALPH REINERTSEN, ITS
BUSINESS AGENT, AND J. J. ROHAN, ITS SECRETARY,**

Petitioners

vs.

GEORGE E. CLINE,

Respondent

**PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF WASHING-
TON AND BRIEF IN SUPPORT OF PETITION.**

**SAMUEL B. BASSETT,
JOHN GEISNESS,
*Attorneys for Petitioners.***

**811 New World Life Building,
Seattle 4, Washington.**

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 364

AUTOMOBILE DRIVERS AND DEMONSTRATORS
LOCAL UNION NO. 882, RALPH REINERTSEN, ITS
BUSINESS AGENT, AND J. J. ROHAN, ITS SECRETARY,

Petitioners,

vs.

GEORGE E. CLINE,

Respondent

**PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF WASHING-
TON.**

To the Honorable Supreme Court of the United States:

Automobile Drivers and Demonstrators Local Union No. 882, Ralph Reinertsen and J. J. Rohan, the petitioners herein, pray that a writ of certiorari be issued to review the final decree of the Supreme Court of the State of Washington affirming the decree of the Superior Court of King County, Washington, permanently enjoining the peaceful picketing of respondent's place of business.

Statement of Matter Involved

The case involves the right of a labor union and its officers to picket under the Fourteenth Amendment to the Federal Constitution.

The petitioner, Automobile Drivers and Demonstrators Local Union No. 882 (hereinafter referred to as the union) is a labor union (R. 4), its membership being composed of automobile salesmen in the Seattle area (R. 4).

The respondent is engaged in the business of buying and selling used automobiles (R. 4). He has never employed a member of the union nor any salesmen, doing all the selling himself (R. 6, 36). He was a member of an automobile dealers association composed of used car dealers and organized for the purpose of negotiating on behalf of its members collective bargaining contracts with labor unions. As a member of this association respondent was bound by a collective bargaining agreement between the union and the association which required him, and all other member dealers, to keep his business closed on Saturdays, Sundays and certain specified holidays (R. 5, 34, 43, 45, 70). The respondent, in violation of this agreement, sold used cars on Saturdays (R. 6, 32, 47), and the union picketed his place of business to compel him to observe the contract (R. 6, 30, 43). The pickets (normally two, sometimes one and occasionally three or four) patrolled along the sidewalk in front of respondent's place of business carrying "sandwich" signs reading "THIS FIRM UNFAIR TO LOCAL 882 A. F. of L." (R. 7, 37-38).

As a result of this picketing two employees—a mechanic and a handyman—quit work (R. 31, 37), respondent's sales fell off (R. 7, 31) and drivers for supply houses refused to deliver automobile parts and materials (R. 7, 31, 41). In order to obtain such supplies he was required to transport them in his own vehicle (R. 41).

The trial court specifically found that "the picketing was entirely peaceful, the pickets neither using force nor threatening physical violence nor molesting anyone either seeking to enter or leave plaintiff's (respondent's) place of business" (R. 7). (And this finding was approved by the Supreme Court of Washington, R. 23). The trial court concluded, however, that there was no "labor dispute" under the laws of the State of Washington, and, therefore, the picketing was "unlawful"; and that to enjoin it would not infringe the petitioners' right of freedom of speech as guaranteed by the First and Fourteenth Amendments to the Federal Constitution (R. 8, 96). The decree permanently restrained and enjoined the petitioners from "in any manner picketing plaintiff's (respondent's) place of business" (R. 16).

Affirming the decree, three judges dissenting, the Supreme Court of Washington also held that there was no labor dispute under the laws of Washington, because the respondent employed no member of the union; *and that the picketing, although peaceful, was, nevertheless, "coercive", hence the Fourteenth Amendment afforded the petitioners no protection* (R. 24). Said the court, in part:

"Appellants (petitioners) contend that a 'labor dispute' was shown to exist under the definition of that term as found in Rem. Rev. Stat. (Sup.), Sec. 7612-13;¹ that in picketing respondent's place of business appellant union was merely exercising its right of freedom of speech guaranteed by the first and fourteenth amendments to the constitution of the United States.

.

¹ This section of the Washington statute—an analogue of the Federal Norris-Laguardia Act—defines labor dispute: "The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee."

We are of the opinion that this case is controlled by the principles announced in the *Gazzam* case, *supra*.² ; that respondent did not have in his employ at the time this action was commenced, nor had he ever had in his employ, a member of appellant union.

We are firmly of the opinion that the picketing in this case was coercive, and, being coercive, is not protected by the statutes nor by the state or Federal constitutions.

We see no good purpose in again reviewing and analyzing the cases set out and discussed in the *Gazzam* case. We appreciate fully what has been said by the supreme court of the United States, and we have in this opinion considered the additional authority by that court cited by appellant, but we are still of the same view as expressed in the *Gazzam* case.

We may say further that we are entirely in accord with the majority opinion in the case of *Hanke v. International Brotherhood of Teamsters, etc., Local No. 309*, 133 Wash. Dec. 625,³ and reference is here made to that case for a further discussion of our own cases, including the *Gazzam* case, and cases from the supreme court of the United States." (R. 24-25).

² *Gazzam v. Building Service Employees International Union, etc.*, 29 Wn. (2d) 488, 188 P. (2d) 97, (holding that peaceful picketing of an employer's place of business is not protected by the constitutional guaranty of free speech and is unlawful, where the employees are not members of the picketing union, and the purpose of the picketing is to force the employees to join the union.) Petition for certiorari pending in this Court to review the final judgment reported in 134 Wash. Dec. 34, 207 P. (2d) 699.

³ 133 Washington Decisions 625, 207 P. (2d) 206, holding on authority of the *Gazzam* case, *supra*, that peaceful picketing by a union is not protected by the Fourteenth Amendment where the employer does not employ any member of the union. Petition for certiorari has been docketed in this Court as No. 309, October Term 1949.

Jurisdiction

1. Jurisdiction of this Court is invoked under Title 28, United States Code, Section 1257, which provides, in part:

“Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

(3) By writ of certiorari, . . . where any title, right, privilege or immunity is specially set up or claimed under the Constitution, . . .”

2. The following cases are believed to sustain the jurisdiction of this Court:

American Federation of Labor v. Swing, 312 U. S. 321, 85 L. Ed. 855, 61 S. Ct. 568;

Bakery & Pastry Drivers & Helpers Local 802, etc. v. Wohl, 315 U. S. 769, 86 L. Ed. 1178, 62 S. Ct. 816;

Cafeteria Employees Union, Local 302, v. Angelos, 320 U. S. 293, 88 L. Ed. 58, 64 S. Ct. 126.

3. The Supreme Court of the State of Washington is the highest court of the state.⁴

4. The judgment of which review is sought is a final judgment of the Supreme Court of Washington (R. 25).

5. The judgment herein sought to be reviewed was filed on July 6, 1949 (R. 25). (On the same day the Supreme Court of Washington made and entered an order fixing the amount of bond for costs on petition for certiorari, which bond was filed on that day.)

6. The Federal question of substance which has been decided by the State court is that the constitutional guaranty

⁴ State Constitution, Article IV, Sections 1 and 4, Remington's Revised Statutes of Washington, Volume 1.

of freedom of discussion is not infringed by the common law policy of a State which forbids peaceful picketing by labor unions where there is no immediate employer-employee dispute. That decision of the Supreme Court of the State of Washington is squarely in conflict with the decisions of this Court construing the Fourteenth Amendment to the Federal Constitution. (*American Federation of Labor v. Swing*, 312 U. S. 321, 85 L. Ed. 855, 61 S. Ct. 568; *Bakery & Pastry Drivers & Helpers Local 802, etc. v. Wohl*, 315 U. S. 769, 86 L. Ed. 1178, 62 S. Ct. 816; *Cafeteria Employees Union, Local 302, v. Angelos*, 320 U. S. 293, 88 L. Ed. 58, 64 S. Ct. 126).

7. The Federal question was timely raised and considered. At the conclusion of the hearing, and before the trial court had announced its oral decision, on the respondent's application for a temporary injunction, petitioners' counsel made the following statement to the trial judge:

"Mr. Bassett: While Your Honor understands that we are asking that the plaintiff's application for temporary injunction be denied, I do not think we made such a motion. I would like to make a formal motion to that effect at this time and have the record show that we claim the protection of the First and Fourteenth Amendments to the Constitution of the United States." (R. 88).

Following the hearing the trial court rendered an oral decision (R. 88) and later filed a memorandum decision (R. 88) in which he passed upon the constitutional question, denied petitioners' motion and, accordingly, made findings of fact and conclusions of law, which also ruled upon the petitioners' claimed right under the Federal Constitution, in the following language:

"That said picketing was coercive, and, therefore, an injunction forbidding the same would not infringe

the defendants' (petitioners') right of freedom of speech guaranteed by the First and Fourteenth Amendments to the Constitution of the United States" (R. 8).

Thereafter the petitioners filed their answer to the respondent's complaint, specifically claiming the protection of the First and Fourteenth Amendments to the Constitution as follows:

"That in conducting the aforesaid picketing the defendants (petitioners) were merely exercising their right of freedom of speech guaranteed by the First and Fourteenth Amendments to the Constitution of the United States" (R. 12).

Subsequently, the cause having come on for trial on the merits before the same judge, the parties, through their counsel stipulated in open court that the case be submitted for final judgment on the merits, based on the evidence previously introduced on respondent's application for a temporary injunction and the arguments presented (R. 97), and the court having reconsidered and reaffirmed the written memorandum opinion filed and the findings of fact and conclusions of law previously made and entered, made and entered its decree permanently enjoining the petitioners from "in any manner picketing" the respondent's place of business (R. 15-16).

The Supreme Court of Washington, in affirming the trial court's decree, likewise passed upon the petitioners' claimed constitutional right, saying:

"Appellants (petitioners) contend that a 'labor dispute' was shown to exist in this case between respondent and appellant union, under the definition of that term as found in Rem. Rev. Stat. (Sup.), Sec. 7612-13; that in picketing respondent's place of business appellant union was merely exercising its right of freedom of speech guaranteed by the first and fourteenth amend-

ments to the constitution of the United States." (Emphasis supplied) (R. 24).

and concluding:

"We are firmly of the opinion that the picketing in this case was coercive, and, being coercive, is not protected by the statutes nor by the state or *Federal constitutions* (R. 24).

• • • *We appreciate fully what has been said by the Supreme Court of the United States, and we have in this opinion considered the additional authority by that court cited by appellant, but we are still of the same view as expressed in the Gazzam case.*" (Emphasis supplied) (R. 24).

The Question Presented

Is the constitutional guaranty of freedom of communication infringed by the common law policy of a State forbidding peaceful picketing by a labor union where there is no immediate employer-employee dispute?

Reasons Relied On for the Allowance of the Writ

The Supreme Court of Washington has decided an important question arising under the First and Fourteenth Amendments to the Constitution of the United States, involving the right of labor unions to make known, through peaceful picketing, the facts of a labor dispute, in a way probably untenable and in conflict with the applicable decisions of this Court in the following cases:

Senn v. Tile Layers Protective Union, 301 U. S. 468, 81 L. Ed. 1229, 57 S. Ct. 857;

Thornhill v. Alabama, 310 U. S. 88, 84 L. Ed. 1093, 60 S. Ct. 736;

Carlson v. California, 310 U. S. 106, 84 L. Ed. 1104, 60 S. Ct. 746;

American Federation of Labor v. Swing, 312 U. S. 321,
85 L. Ed. 855, 61 S. Ct. 568;

Bakery & Pastry Drivers & Helpers, Local 802 v. Wohl,
315 U. S. 769, 86 L. Ed. 1178, 62 S. Ct. 816;

Cafeteria Employees Union v. Angelos, 320 U. S. 293,
88 L. Ed. 58, 64 S. Ct. 126.

The Supreme Court of Washington has held that peaceful picketing by a labor union is "unlawful" where there is no immediate employer-employee dispute and, being thus unlawful, is not protected by the Fourteenth Amendment. This holding is directly in conflict with the decisions of this Court in *American Federation of Labor v. Swing*, *Bakery & Pastry Drivers & Helpers v. Wohl*, and *Cafeteria Employees Union v. Angelos*, *supra*. The Supreme Court of Washington says:

" . . . peaceful picketing of an employer's place of business is not protected by the constitutional guaranty of free speech and is unlawful, where the employees are not members of the picketing union and the purpose of the picketing is to force the employees to join the union or to compel the employer to enter into a contract which would, in effect, compel his employees to become members of the union." (*Hanke v. Teamsters Union*, 133 Wash. Dec. 625, 633, 207 P. (2d) 206, quoting the *Gazzam* case, *supra*).

In *American Federation of Labor v. Swing*, *supra*, this Court said:

"We are asked to sustain a decree which for purposes of this case asserts as the common law of a state that there can be no 'peaceful picketing or peaceful persuasion' in relation to any dispute between an employer and a trade union unless the employer's own employees are in controversy with him.

"Such a ban of free communication is inconsistent with the guaranty of freedom of speech. . . . The

scope of the Fourteenth Amendment is not confined by the notion of a particular state regarding the wise limits of an injunction in an industrial dispute, whether those limits be defined by statute or by the judicial organ of the state. A state can not exclude workingmen from peacefully exercising the right of free communication by drawing the circle of economic competition between employer and those directly employed by him. The interdependence of economic interests of all engaged in the same industry has become a commonplace. *American Steel Foundries v. Tri-City Central Trades Council*, 257 U. S. 184, 209. The right of free communication can not therefore be mutilated by denying it to workers, in a dispute with an employer, even though they are not in his employ. • • •

The decree of the Supreme Court of Washington manifestly deprives the petitioners of the right to make known the facts of the dispute between them and respondent, through peaceful picketing, solely because *respondent employs no member of the union in the operation of his business*. But this was the precise factual situation in *Bakery & Pastry Drivers & Helpers Local 802, etc. v. Wohl*, 315 U. S. 769, 86 L. Ed. 1178, 62 S. Ct. 816, *supra*, and in *Cafeteria Employees Union, Local 302 v. Angelos*, 320 U. S. 293, 88 L. Ed. 58, 64 S. Ct. 126, *supra*, and this Court in each of these cases applied the doctrine of the *Swing* case, in the *Wohl* case saying:

“• • • One need not be in a ‘labor dispute’ as defined by state law to have a right under the Fourteenth Amendment to express a grievance in a labor matter by publication unattended by violence, coercion, or conduct otherwise unlawful or oppressive” (page 774)

and in the *Angelos* case:

“But, as we have heretofore decided, a state can not exclude workingmen in a particular industry from putting their case to the public in a peaceful way ‘by

drawing the circle of economic competition between employers and workers so small as to contain only an employer and those directly employed by him.' " (page 296)

Your petitioners respectfully submit that the writ of certiorari should issue to the end that this Court may review the decision of the Supreme Court of Washington and determine whether that court has deprived petitioners of rights guaranteed by the Fourteenth Amendment to the Federal Constitution.

SAMUEL B. BASSETT,
JOHN GEISNESS,
Attorneys for Petitioners.

STATE OF WASHINGTON,
County of King, ss:

SAMUEL B. BASSETT, being first duly sworn, on oath deposes and says: That he is one of the attorneys for the petitioners herein; that he has read the foregoing petition and knows the contents thereof, and that the same is true to the best of his knowledge and belief, except as to matters therein stated to be alleged upon information and belief, and as to those matters he believes the same to be true.

SAMUEL B. BASSETT.

Subscribed and sworn to before me this 12th day of
September, 1949.

JOHN GEISNESS,
[SEAL.] *Notary Public in and for the State of
Washington, Residing at Seattle.*

I hereby certify that I have examined the foregoing petition, and that in my opinion it is well founded in law as well as in fact and not interposed for delay, and that the case is one in which the prayer of the petitioners should be granted.

SAMUEL B. BASSETT,
Attorney for Petitioners.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 364

**AUTOMOBILE DRIVERS AND DEMONSTRATORS
LOCAL UNION NO. 882, RALPH REINERTSEN, ITS
BUSINESS AGENT, AND J. J. ROHAN, ITS SECRETARY,**

Petitioners,

vs.

GEORGE E. CLINE,

Respondent

**BRIEF IN SUPPORT OF PETITION FOR WRIT OF
CERTIORARI TO THE SUPREME COURT OF THE
STATE OF WASHINGTON.**

I.

Opinion of the Court Below

The opinion of the Supreme Court of Washington (R. 17) is reported in Volume 133 Washington Decisions 644, 207 P. (2d) 216.

II.

Jurisdiction

Jurisdiction is fully covered in the foregoing petition and the statement there made is adopted here by reference.

III.

Statement of the Case

A concise statement of the facts relevant to the constitutional question involved is set forth in the foregoing petition under the heading "STATEMENT OF MATTER INVOLVED" and, in the interest of brevity, is adopted here by reference.

Other facts relating to the dispute between petitioners and respondent, which we do not consider relevant to the constitutional question presented, but which were mentioned in the opinions of the courts below, are stated here for the convenience of the Court:

The respondent had been engaged in the business of selling used automobiles for about four and one-half years prior to May 19, 1948—the date of the trial (R. 30). Sometime in 1945 he became a member of the union (R. 42) and when initiated he was obligated to abide by the constitution and by-laws of the union and the applicable terms and conditions of collective bargaining contracts which the union made with employers of automobile salesmen (R. 66). In the spring of 1946 respondent also became a member of the dealers association, mentioned in the foregoing petition (R. 43). At that time the union was attempting to obtain an agreement with the association whereby the members thereof would close their places of business on Saturdays (R. 43). Respondent was opposed to Saturday closing (R. 45) and, as a representative of the association, he personally participated in the contract negotiations between the union and the association in an effort to prevent agreement thereon (R. 44). Despite his efforts, however, the contract which the union and the association finally executed on June 20, 1946, provided, among other things, that used car dealers would close their show rooms and used car lots not later than

6:00 P. M. on all week days and keep them closed on Saturdays, Sundays and certain specified holidays, and required them to display a conspicuous sign reading "CLOSED SATURDAYS, SUNDAYS AND HOLIDAYS" (R. 44, 69-70). Thereafter for a period of about three months the respondent, pursuant to the constitution and by-laws of the union and in obedience to the contract between the union and the dealers association, kept his place of business closed on Saturdays (R. 45). On August 30, 1947, while the contract was still in full force and effect and while respondent was still a member of the union in good standing, he notified the union that henceforth he would keep open for business on Saturdays, and he removed from his used car lot the sign which he had previously displayed and substituted one stating "OPEN SATURDAYS" (R. 6, 32). The picketing of respondent's premises followed immediately and continued without interruption, until enjoined by the court the following May (R. 6, 8). Prior to the commencement of this action the respondent had been dropped from the union (R. 5), and he had withdrawn from the dealers association (R. 5).

The contract between the union and the association remained in effect until the 14th day of April, 1948, when a new contract was executed between the parties which required the members of the association to keep their places of business closed on Saturdays after 1:00 P. M. (R. 6, 47). At that time the respondent was not a member of the association (R. 72). After the execution of the new contract petitioners offered to discontinue the picketing if respondent would conduct his business in accordance with the terms of the new contract (R. 48-49, 72). The respondent refused and shortly thereafter commenced this action.

Although these additional facts were noticed by the courts below their decisions were not rested thereon. The

judgment of the Supreme Court of Washington was rested solely on the undisputed fact that the *respondent employed no member of the union*. That court held that because the respondent did not employ any member of the union there was no "labor dispute" under Washington law, and hence the picketing, although peaceful, was "coercive" and "unlawful". And because the picketing was thus unlawful the court further held that to enjoin it would not deprive the petitioners of the right of freedom of speech as guaranteed by the Fourteenth Amendment.

IV.

Specifications of Error

1. The State Supreme Court erred in holding that the injunction does not deprive petitioners of the right of freedom of speech guaranteed by the Fourteenth Amendment.

2. The State Supreme Court erred in holding that the constitutional guaranty of freedom of speech is not infringed by the judicial policy of the state which forbids peaceful picketing where there is no immediate employer-employee dispute.

V.

Summary of Argument

A. The decree permanently enjoining the petitioners "from in any manner picketing" respondent's place of business deprives them of the right of freedom of discussion and communication guaranteed by the Fourteenth Amendment.

B. The constitutional guaranty of freedom of discussion and communication is infringed by the judicial policy of the State of Washington which forbids peaceful picketing by workingmen where there is no immediate employer-employee dispute.

ARGUMENT**A. The Decree Permanently Enjoining the Petitioners "From In Any Manner Picketing" Respondent's Place of Business Deprives Them of the Right of Freedom of Discussion and Communication Guaranteed by the Fourteenth Amendment.**

The picketing enjoined by the decree was admittedly peaceful and free from physical coercion or intimidation and when initiated was conducted for the purpose of compelling the respondent to observe a contract which bound him and other used car dealers in the Seattle area to close on Saturdays. Later, when that contract expired and respondent was not a party to the new contract which required closing on Saturdays after 1:00 P. M., the purpose of the picketing was to induce respondent to conduct his business in conformity therewith.

The Supreme Court of Washington (three judges dissenting) held that there was no "labor dispute" and the picketing was unlawful under the common law of the state because:

(1) The respondent employed no member of the Union;

(2) At the time of trial he was not himself a member of the union and was not bound by any contract with the union concerning the manner in which his business was to be conducted.

Hence, the court concluded that the injunction did not deprive petitioners of the right of freedom of discussion and communication as guaranteed by the Fourteenth Amendment, saying:

"We are of the opinion this case is controlled by the principles announced in the *Gazzam* case, *supra* . . .

We are firmly of the opinion that the picketing in this case was coercive, and, being coercive, is not protected by the statutes nor by the state or Federal constitutions.

We see no good purpose in again reviewing and analyzing the cases set out and discussed in the *Gazzam* case. We appreciate fully what has been said by the supreme court of the United States, and we have in this opinion considered the additional authority by that court cited by appellant, but we are still of the same view as expressed in the *Gazzam* case.

We may say further that we are entirely in accord with the majority opinion in the case of *Hanke v. International Brotherhood of Teamsters, etc., Local No. 309*, 133 Wash. Dec. 625, and reference is here made to that case for a further discussion of our own cases, including the *Gazzam* case, and cases from the supreme court of the United States."

It will be observed that the Supreme Court of Washington, in the opinion, fails to point out why the rule laid down by this Court in *American Federation of Labor v. Swing*, 312 U. S. 321, 85 L. Ed. 855, 61 S. Ct. 568; *Bakery & Pastry Drivers & Helpers Local 802, etc., v. Wohl*, 315 U. S. 769, 86 L. Ed. 1178, 62 S. Ct. 816; and *Cafeteria Employees Union, Local 302, v. Angelos*, 320 U. S. 293, 88 L. Ed. 58, 64 S. Ct. 126, upon which the petitioners particularly relied, did not apply to the facts of this case, but merely rested its judgment on two of its own recent decisions (*Gazzam v. Building Service Employees International Union, etc.*, 29 Wn. (2d) 488, 188 P. (2d) 97, and *Hanke v. International Brotherhood of Teamsters, etc., Local No. 309*, 133 Washington Decisions 625), both of which are now pending in this Court on petitions for writs of certiorari. For this reason we must briefly refer to those decisions.

In the *Gazzam* case the Supreme Court of Washington held that peaceful picketing of an employer's place of busi-

ness is not protected by the constitutional guaranty of free speech and is unlawful where the employees are not members of the picketing union and the purpose of the picketing is to induce the employees to join the union. Although the majority opinion cited the *Swing* case it made no attempt whatever to distinguish it. We submit the two cases are directly in conflict.

In the *Hanke* case the Supreme Court of Washington held that peaceful picketing of a copartnership business which is conducted by the partners without hired help is not protected by the constitutional guaranty of free speech and is unlawful where the purpose of the picketing is to induce them to conduct their business in conformity with a contract regulating business hours, which the union had with employers of union labor in the same industry. The court there said:

“The facts in the instant case fall squarely within the inhibition of the *Gazzam* case. . . .

This conclusion is the view of the majority of this court as presently constituted, and therefore, without further comment thereon, we decline to overrule the *Gazzam* case, *supra*.

Appellants strenuously contend that our holding in the *Gazzam* case, *supra*, is in direct conflict with certain decisions of the United States supreme court and for that reason the *Gazzam* case should now be overruled. The decisions which appellants cite and on which they rely as supporting their contention are the following: *Senn v. Tile Layers Protective Union, Local No. 5*, 301 U. S. 468, 81 L. Ed. 1229, 57 S. Ct. 857; *Thornhill v. Alabama*, 310 U. S. 88, 84 L. Ed. 1093, 60 S. Ct. 736; *American Federation of Labor v. Swing*, 312 U. S. 321, 85 L. Ed. 855, 61 S. Ct. 568; *Bakery & Pastry Drivers & Helpers Local 802, etc. v. Wohl*, 315 U. S. 769, 86 L. Ed. 1178, 62 S. Ct. 816; *Cafeteria Employees Union, Local 302 v. Angelos*, 320 U. S. 293, 88 L. Ed. 58, 64 S. Ct. 126.

Our view of the effect of those decisions does not coincide with that of the appellants.

We do not believe that the United States supreme court has ever held that the right of free speech is an absolute right, to be protected regardless of the deleterious effect so produced in regard to other interests also protected by the Federal constitution; nor do we believe that the United States supreme court has ever said that a state is without power to abridge this right where such a course is necessary to protect property rights and is in the general interests of the community.

.

In our opinion, there is small reason for holding that the appellant union, acting under the guise of protecting the union's freedom of speech, cannot be restrained from depriving the respondents of the liberty of lawfully conducting their business in the only manner that it could be profitably conducted.

We are clearly of the opinion that the decree of the trial court in the instant case is not contrary to the provisions of the constitution of the United States."

This holding and the reasoning which influenced the Supreme Court of Washington to so hold, we submit, is in conflict with that of this Court in *Senn v. Tile Layers Protective Union*, 301 U. S. 468, 81 L. Ed. 1229, 57 S. Ct. 857. Senn conducted a small business employing one or two journeymen tile layers and one or two helpers, depending upon the amount of work he had contracted to do at the time. He also worked with the tools of the trade. Neither he nor any of his employees was a member of the union and neither had any contractual relations with the union. The picketing was conducted for the purpose of inducing Senn to unionize his business and execute a union contract. This Court ruled:

"Members of a union might, without special statutory authorization by a State, make known the facts

of a labor dispute, for freedom of speech is guaranteed by the Federal Constitution." (Emphasis supplied)

And the reasoning of the Court (Mr. Justice Brandeis speaking) was:

"The sole purpose of the picketing was to acquaint the public with the facts and, by gaining its support to induce Senn to unionize his shop. There was no effort to induce Senn to do an unlawful thing. There was no violence, no force was applied, no molestation or interference, no coercion. There was only the persuasion incident to publicity. . . .

The unions acted, and had the right to act, as they did, to protect the interests of their members against the harmful effect upon them of Senn's action. Compare *American Steel Foundries v. Tri-City Central Trades Council*, *supra*, (257 U. S. 208, 209). Because his action was harmful, the fact that none of Senn's employees was a union member, or sought the union's aid, is immaterial. . . .

There is nothing in the Federal Constitution which forbids unions from competing with non-union concerns for customers by means of picketing as freely as one merchant competes with another by means of advertisements in the press, by circulars, or by his window display. Each member of the unions, as well as Senn, has the right to strive to earn his living. Senn seeks to do so through exercise of his individual skill and planning. The union members seek to do so through combination. Earning a living is dependent upon public favor. To win the patronage of the public each may strive by legal means. . . . It is true that disclosure of the facts of the labor dispute may be annoying to Senn even if the method and means employed in giving the publicity are inherently unobjectionable. But such annoyance like that often suffered from publicity in other connections, is not an invasion of the liberty guaranteed by the Constitution. Compare *Pennsylvania R. Co. v. United States R. Labor Bd.*, 261 U. S. 72. It is true, also that disclosure of

the facts may prevent Senn from securing jobs which he hoped to get. But a hoped-for job is not property guaranteed by the Constitution. And the diversion of it to a competitor is not an invasion of a constitutional right."

In the instant case when the dispute arose the respondent was a member of the union and as such was bound by its constitution and by-laws⁵ to abide by the terms and conditions of the contract between the union and the association; and as a member of the dealer's association he was also bound by that contract to keep his used car lot closed on Saturdays. The union picketed to compel respondent to keep his union commitments and observe his contract, and this was an entirely lawful objective. At the time of trial the contract between the union and association had expired and the new contract between the parties provided for Saturday closing after 1:00 P. M. The purpose of the picketing then was to persuade respondent, by use of economic pressure, not to sell used cars after 1:00 P. M. on Saturdays and this likewise was a perfectly lawful objective because the manner in which respondent was conducting his business was detrimental to the economic welfare of the union and its members, who were in competition with the respondent in the sale of used automobiles.

Applying the principles of the *Senn* case, this Court has repeatedly held that such appeal for public support, through peaceful picketing, is protected by the Fourteenth Amendment.

American Federation of Labor v. Swing, 312 U. S. 321, 85 L. Ed. 855, 61 S. Ct. 568;

Bakery & Pastry Drivers & Helpers Local 802, etc. v. Wohl, 315 U. S. 769, 86 L. Ed. 1178, 62 S. Ct. 816;

⁵ Exhibit 2, Article VII, Section 4 (R. 67), provides: "Any member of this local violating any of the other provisions of any contract between this local and our employers shall be expelled from membership in the union."

Cafeteria Employees Union, Local 302 v. Angelos, 320 U. S. 293, 88 L. Ed. 58, 62 S. Ct. 126.

In *American Federation of Labor v. Swing*, *supra*, the Court said:

"We are asked to sustain a decree which for purposes of this case asserts as the common law of a State that there can be no 'peaceful picketing or peaceful persuasion' in relation to any dispute between an employer and a trade union unless the employer's own employees are in controversy with him.

Such a ban of free communication is inconsistent with the guaranty of freedom of speech." (Emphasis supplied)

The decree which the Supreme Court of Washington affirmed was as unrestricted as that in the *Swing* case. It enjoined all picketing and in so doing deprived petitioners of freedom of speech.

B. The Constitutional Guaranty of Freedom of Discussion and Communication Is Infringed by the Judicial Policy of the State of Washington Which Forbids Peaceful Picketing by Workingmen Where There Is No Immediate Employer-Employee Dispute.

Before this Court decided *American Federation of Labor v. Swing*, *supra*, the Supreme Court of Washington had established, in a long line of decisions commencing in 1935 (some of which are: *Safeway Stores v. Retail Clerks' Union, Local No. 148*, (1935), 184 Wash. 322, 51 P. (2d) 372; *Adams v. Building Service Employees International Union, Local No. 6*, (1938), 197 Wash. 242, 84 P. (2d) 1021; *Fornili v. Auto Mechanics' Union, Local No. 297*, (1939), 200 Wash. 283, 93 P. (2d) 422; *Shively v. Garage Employees Local Union No. 44*, (1940), 6 Wn. (2d) 560, 107 P. (2d) 354), a judicial policy which forbids peaceful picketing by

labor unions in the absence of an immediate employer-employee dispute.

The first case which came before the Supreme Court of Washington, involving the right to peacefully picket, after *American Federation of Labor v. Swing*, was *O'Neil v. Building Service Employees International Union, Local No. 6*, (1941), 9 Wn. (2d) 507, 115 P. (2d) 662. In that case the plaintiff operated two apartment houses with the assistance of her family and without the help of outside employees. The union peacefully picketed the apartment houses in an effort to induce the plaintiff to join the union. Although there was no immediate employer-employee dispute the court, as then constituted, four judges dissenting, held, on the authority of *American Federation of Labor v. Swing*, *supra*, that the peaceful picketing of plaintiff's apartment houses could not be enjoined in view of the Fourteenth Amendment, saying in part:

"The Constitution of the United States is the supreme law of the land. However much we may disagree with the interpretation of that Constitution by the United States Supreme Court, such interpretation is binding on us."

The next case which came before the Washington Supreme Court, involving the right to picket, was *S & W Fine Foods v. Retail Delivery Drivers & Salesmen's Union, Local 353*, (1941), 11 Wn. (2d) 262, 118 P. (2d) 962. The union in that case picketed the plaintiff's warehouse because its salesmen, who were satisfied with their wages, hours and working conditions, had refused to join the union. The court again, one judge dissenting, on the authority of *American Federation of Labor v. Swing*, *supra*, held that the right to peacefully picket was protected by the Fourteenth Amendment. This seemed to be the settled law of the State of Washington until December 22, 1947,

when the Supreme Court of Washington handed down its decision in *Gazzam v. Building Service Employees International Union, Local 262, et al.*, 29 Wn. (2d) 488, 188 P. (2d) 97, *supra*. In that case the court, as then constituted, four judges dissenting, held that the peaceful picketing of an employer's place of business is not protected by the constitutional guaranty of free speech and is unlawful, where the employees are not members of the picketing union and the purpose of the picketing is to organize them. And in so holding the court expressly overruled its two preceding decisions which had adopted the rule of *American Federation of Labor v. Swing*.

As we have observed, the decree in the instant case, as in *Hanke v. International Brotherhood of Teamsters, etc., Local No. 309*, 133 Wash. Dec. 625, was affirmed on the authority of the *Gazzam* case. Thus, the Supreme Court of Washington has, in effect, ruled that the judicial policy of the state which forbids peaceful picketing where there is no immediate employer-employee dispute does not abridge the Fourteenth Amendment, and this holding, we submit, is directly in conflict with the decisions of this Court in the *Swing*, *Wohl* and *Angelos* cases, *supra*.

In the *Swing* case this Court said:

"More thorough study of the record and full argument have reduced the issue to this: is the constitutional guaranty of freedom of discussion infringed by the common law policy of a state forbidding resort to peaceful persuasion through picketing merely because there is no immediate employer-employee dispute?"

Answering this question, the Court said:

"All that we have before us, then, is an instance of 'peaceful persuasion' disentangled from violence and free from 'picketing en masse or otherwise conducted' so as to occasion 'imminent and aggravated danger.'"

Thornhill v. Alabama, 210 U. S. 88, 105, 84 L. Ed. 1093, 1104, 60 S. Ct. 736. We are asked to sustain a decree which for purposes of this case asserts as the common law of a state that there can be no 'peaceful picketing or peaceful persuasion' in relation to any dispute between an employer and a trade union unless the employer's own employees are in controversy with him.

"Such a ban of free communication is inconsistent with the guaranty of freedom of speech. That a state has ample power to regulate the local problems thrown up by modern industry and to preserve the peace is axiomatic. But not even these essential powers are unfettered by the requirements of the Bill of Rights. The scope of the Fourteenth Amendment is not confined by the notion of a particular state regarding the wise limits of an injunction in an industrial dispute, whether those limits be defined by statute or by the judicial organ of the state. A state cannot exclude workingmen from peacefully exercising the right of free communication by drawing the circle of economic competition between employers and workers so small as to contain only an employer and those directly employed by him. The interdependence of economic interest of all engaged in the same industry has become a commonplace. *American Steel Foundries v. Tri-City Central Trades Council*, 257 U. S. 184, 209, 66 L. Ed. 189, 199, 42 S. Ct. 72, 27 A. L. R. 360. The right of free communication cannot therefore be mutilated by denying it to workers, in a dispute with an employer, even though they are not in his employ. Communication by such employees of the facts of a dispute, deemed by them to be relevant to their interests, can no more be barred because of concern for the economic interests against which they are seeking to enlist public opinion than could the utterance protected in *Thornhill's Case*."

In the *Wohl* case this Court, reversing the judgment of the Court of Appeals of New York, holding that there was no "labor dispute" within the meaning of the statutes of New York because the respondents employed no one to assist

them in conducting their business, and that the injunction against picketing did not violate the Fourteenth Amendment, said:

"So far as we can ascertain from the opinions delivered by the state courts in this case, those courts were concerned only with the question whether there was involved a labor dispute within the meaning of the New York statutes and assumed that the legality of the injunction followed from a determination that such a dispute was not involved. Of course that does not follow: one need not be in a 'labor dispute' as defined by state law to have a right under the Fourteenth Amendment to express a grievance in a labor matter by publication unattended by violence, coercion, or conduct otherwise unlawful or oppressive."

In the *Angelos* case the plaintiff and his copartners operated a cafeteria, themselves performing all the work pertaining to their business without the assistance of others. The union picketed the cafeteria "in an attempt to organize it." Again reversing the Court of Appeals of New York, which had enjoined the picketing, this Court said:

"In *Senn v. Tile Layers Protective Union*, 301 U. S. 468, 81 L. Ed. 1229, 57 S. Ct. 857, this Court ruled that members of a union might, 'without special statutory authorization by a State, make known the facts of a labor dispute, for freedom of speech is guaranteed by the Federal Constitution.' 301 U. S. at 478, 81 L. Ed. 1236, 57 S. Ct. 857. Later cases applied the Senn Doctrine by enforcing the right of workers to state their case and to appeal for public support in an orderly and peaceful manner regardless of the area of immunity as defined by state policy. *American Federation of Labor v. Swing*, 312 U. S. 321, 85 L. Ed. 855, 61 S. Ct. 568; *Bakery & P. Drivers & Helpers, I. B. T. v. Wohl*, 315 U. S. 769, 86 L. Ed. 1178, 62 S. Ct. 816. To be sure the Senn Case related to the employment of 'peaceful picketing and truthful publicity.' 301 U. S. at 482, 81

L. Ed. 1238, 57 S. Ct. 857. That the picketing under review was peaceful is not questioned. • • • We have before us a prohibition as unrestricted as that which we found to transgress state power in *American Federation of Labor v. Swing*, 312 U. S. 321, 85 L. Ed. 855, 61 S. Ct. 568, *supra*. The Court here, as in the *Swing Case*, was probably led into error by assuming that if a controversy does not come within the scope of state legislation limiting the issue of injunctions, efforts to make known one side of an industrial controversy by peaceful means may be enjoined. But, as we have heretofore decided, a state cannot exclude working men in a particular industry from putting their case to the public in a peaceful way 'by drawing the circle of economic competition between employers and workers so small as to contain only an employer and those directly employed by him.' *American Federation of Labor v. Swing*, 312 U. S. at 326, 85 L. Ed. 857, 61 S. Ct. 568."

Respectfully submitted,

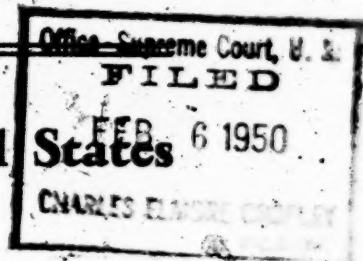
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(4308)

Supreme Court of the United States

OCTOBER TERM, 1949



No. 364

Automobile Drivers and Demonstrators Local Union
No. 882, RALPH REINERTSEN, Its Business Agent,
and J. J. ROHAN, Its Secretary, *Petitioners,*

vs.

GEORGE E. CLINE,

Respondent.

ON CERTIORARI TO THE SUPREME COURT OF THE
STATE OF WASHINGTON

REPLY BRIEF OF PETITIONERS

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ON CERTIORARI TO THE SUPREME COURT OF THE
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REPLY BRIEF OF PETITIONERS

OPINION OF THE COURT BELOW

The opinion of the Supreme Court of the State of Washington is reported in Volume 133, Wash. Dec. 625; 207 P:(2d) 206 (R. 18).

ARGUMENT

I.

THE COURTS BELOW ENJOINED THE PICKETING SOLELY BECAUSE THERE WAS NO IMMEDIATE EMPLOYER-EMPLOYEE DISPUTE

In our petition for certiorari and supporting brief we asserted that the Supreme Court of Washington in this case held, pursuant to its judicial policy, that the picketing was coercive and unlawful *because there was no immediate employer-employee dispute* and,

being thus unlawful, is not protected by the Fourteenth Amendment. In answer to this the respondent in his brief (p. 10) says:

"The Washington Supreme Court held the picketing to be coercive and unlawful after it had either set forth in its opinion or alluded to the following:

"A. The scope of the petitioning union's picketing activities. The Court set forth portions of the respondent's testimony (R. 22).

"B. The nature of the union demands as a condition to removal of its pickets and the fact that the petitioning union demanded that respondent employ a member of the union, such employee to be compensated by being paid seven per cent of all sales made at respondent's place of business, irrespective of whether such sale was made by the employee or by respondent (R. 23).

"C. The circumstances under which respondent joined the petitioning union in 1945. In this connection the Court quoted from the record (R. 20)."

While it is true that the Supreme Court of Washington in its opinion did "allude" to these matters it did not hold that by reason thereof the picketing was coercive and unlawful. On the contrary, it approved and confirmed the findings of the trial court that the picketing was "entirely peaceful, the pickets using neither force nor threatening physical violence or molesting anyone" (R. 7, 96). Concerning this the Washington Supreme Court said:

"The picketing was peaceful, in that the pickets used neither force, nor threatened physical violence, nor actually molested any persons seeking to enter or leave respondent's place of business.

"The substance of the foregoing statement is contained in the court's findings of fact, and there is no question in our minds but that the court's findings are borne out by the great preponderance of the evidence. The trial court concluded as follows:

"*'That no labor dispute exists within the meaning of the laws of the State of Washington, and said picketing is, therefore, unlawful, and the plaintiff is entitled to an injunction, pendente lite, restraining and enjoining the same.'*

* * * * *

"*'That said picketing was coercive and, therefore, an injunction forbidding the same would not infringe the defendants' right of freedom of speech guaranteed by the First and Fourteenth Amendments to the Constitution of the United States.'*" (Emphasis supplied)

The Court then proceeded to consider the petitioners' contentions.

"Appellants contend that a 'labor dispute' was shown to exist in this case between respondent and appellant union, under the definition of that term as found in Rem. Rev. Stat. (Sup.) Sec. 7612-13;¹ that in picketing respondent's place

¹This Section of the Washington Anti-Injunction Statute — analogue of the Norris-LaGuardia Act—defines labor dispute:

"When used in this Act, and for the purpose of this act—

(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade or occupation, or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers

of business appellant union was merely exercising its right of freedom of speech guaranteed by the first and fourteenth amendments to the constitution of the United States.

"Appellants further contend that the facts of this case do not bring it within the principles announced in *Gazzam v. Building Service Employees International Union*, 29 Wn.(2d) 488, 199 P.(2d) 97."

Answering these contentions and holding the picket-

²Certiorari granted by this Court and case docketed as No. 449, October Term, 1949.

or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or association of employers; or (3) between one or more employees or association of employees and one or more employers or association of employees; or when the case involves any conflicting or competing interests in a 'labor dispute' (as hereinafter defined) of 'persons participating or interested' therein (as hereinafter defined).

(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which dispute occurs, or has a direct or indirect interest therein or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

(c) The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee." (Emphasis supplied)

ing "coercive" and not protected by the Federal Constitution, the court said:

"We are of the opinion this case is controlled by the principles announced in the *Gazzam* case, *supra*. We are of the opinion that the testimony is undisputed that at the time this action was commenced, at which time respondent's place of business was being picketed by appellant union, respondent was not a member of appellant union, and had not been since the time appellant union had started to picket his place of business, namely, the Saturday before Labor Day of 1947; that respondent was not a member of the Association, and had not been since April, 1947, and was not a party to the contract entered into between appellant union and the Association in April of 1948; *that respondent did not have in his employ at the time this action was commenced, nor had he ever had in his employ, a member of appellant union.*

"We are firmly of the opinion that the picketing in this case was coercive, and, being coercive, is not protected by the statutes nor by the state or Federal constitutions." (Emphasis supplied)

Thus it is plain that the picketing was held to be coercive not because of (a) the scope of the picketing activities, (b) the Union's demands as a condition to removal of the pickets, or (c) the circumstances under which respondent joined the Union in 1945, but solely because *the respondent did not have in his employ a member of the Union* and at the time this action was commenced he was not himself a member of the Union and was not bound by any contract with the Union.

If respondent had employed a *single* member of the

Union the Washington court under its well established policy would have held the picketing lawful, regardless of the fact that respondent himself was not a member of the Union and was not bound by any contract with the Union. In *Wright v. Teamsters Union Local No. 690*, 133 Wash. Dec. 869, 207 P.(2d) 662 (decided only twenty-one days after its decision in the present case) the Supreme Court of Washington, in an *en banc* decision, held that peaceful picketing, for the purpose of inducing the plaintiffs to keep their market closed on Sundays, was lawful, where the plaintiffs, a copartnership, employed a single member of the Union. The court there said:

"The decisions of which the *Gazzam* and *Swenson* cases, *supra*, are the prototypes, are consequently not applicable to this situation. Those cases hold only that peaceful picketing of an employer's place of business is unlawful where the employees are not members of the picketing union, and where the purpose of the picketing is to force the employees to join the union or to compel the employer to enter into a contract which would, in effect, compel his employees to become members of the union. In the instant case, on the other hand, Owens being a union member, the union had a clear right to proceed against Wright in order to persuade him to enter into an agreement with it whereby Owens would be working under the same conditions as other union members in the Pasco vicinity."

In *Berger v. Sailors Union of the Pacific*, 29 Wn. (2d) 810, 189 P.(2d) 473, which followed the *Gazzam* case, *supra*, the union picketed a vessel for the purpose of unionizing its crew. It appeared that only four of

its crew were members of the Union. The court held that this established the existence of a labor dispute, saying:

"The facts recited above established the existence of a labor dispute, hence injunction will not lie to prohibit respondent labor Union and its members from peacefully picketing appellant's motorship GARLAND for the purpose of completely unionizing that vessel's crew, of which four were members of the Union."

And one of the judges in a concurring opinion significantly added:

"Certain members of the crew of the MS GARLAND being members of the Union, there was, under our decisions, a labor dispute."

In *Weyerhaeuser Timber Company v. Everett District Council etc.* (1941) 11 Wn. (2d) 503, only 12 employees out of 1278 were members of the Union. Holding that a labor dispute existed and that the picketing was lawful, the court said at page 506:

"Contending that no labor dispute existed, appellant relies upon our decisions in *Safeway Stores v. Retail Clerks' Union*, 184 Wash. 322, 51 P. (2d) 372; *Fornili v. Auto Mechanics' Union*, etc., 200 Wash. 283, 93 P. (2d) 422; and *Shively v. Garage Employees Local Union No. 44*, 6 Wn. (2d) 560, 108 P. (2d) 354. In those decisions, the court held that a labor dispute does not exist unless there is a master and servant relationship between the strikers and the proprietor of the struck shop. Obviously, the decisions have no application here, for such employer-employee relationship did exist between appellant and its employees who were members of Local 2653. The fact that they constituted a small minority make

their controversy with appellant none the less a labor dispute." (Emphasis supplied)

And one of the judges concurring in the result observed at page 538:

"In *Safeway Stores v. Retail Clerks' Union*, 184 Wash. 322, 51 P.(2d) 372 (decided November 8, 1935), *Adams v. Building Service Employees Union*, 197 Wash. 242, 84 P.(2d) 1021 (decided December 6, 1938), *Fornili v. Auto Mechanics*, 200 Wash. 283, 93 P.(2d) 422 (decided August 21, 1939) and *Shively v. Garage Employees Union*, 6 Wn.(2d) 560, 108 P.(2d) 354 (decided December 12, 1940), we held (contrary to statute, Rem. Rev. Stat. (Sup.) Section 7612-1 (P.C. Sec. 3467-21), defining a 'labor dispute') that peaceful picketing of the place of business of an employer by a union which does not include in its membership any employee of such employer, for the purpose of persuading or coercing such employees to join a union against their will, is unlawful and may be enjoined."

The foregoing, in addition to what we have already said in our brief in support of the petition for certiorari at pages 23-25, demonstrates beyond all doubt that when the Supreme Court of Washington in the *Gazzam* case expressly overruled *O'Neil v. Building Service Employees Union*, 9 Wn.(2d) 507, 115 P.(2d) 662, and *S & W Fine Foods v. Retail Delivery Etc. Union*, 11 Wn.(2d) 262, 118 P.(2d) 962, it deliberately refused to be longer bound by the decisions of this Court construing the Federal constitution and reverted to its former policy which forbids "resort to peaceful persuasion through picketing merely because there is no immediate employer-employee dispute."

(*American Federation of Labor v. Swing*). It may be said that this is our prejudiced view. But it was also the considered and frank opinions of the trial judges who tried this and the *Hanke* case (309). In the latter case the trial judge (McDonald) said in his memorandum decision (record *Hanke* case, pages 97-98):

"The plaintiffs rely upon the recent case of *Gazzam v. Building Service Employees International Union, Local 262*, 129 Wash. Dec. 455, decided by the Supreme Court on December 22, 1947. In that case the plaintiff was the owner of a hotel and had fifteen employees consisting of an engineer, janitor, bell boys, clerks and a housekeeper. None of these employees belonged to the defendant union. There was no dispute between the owner of the hotel and his employees regarding wages, hours or conditions of employment.

"In interpreting section 7612-13, subsection (c), Rem. Rev. Stat., known as the anti-injunction act of 1933, our Supreme Court had consistently held that there was no labor dispute within the meaning of that act where no member of the picketing union was an employee of the employer. Despite contrary holdings in the federal courts in construing the Norris-LaGuardia Act, in 1935 our court first announced this rule in the case of *Safeway Stores v. Retail Clerk's Union, Local No. 148*, 184 Wash. 322. By a divided bench our supreme court refused to depart from this construction in a long number of cases which are set out in the *Gazzam* case, down to July 24, 1941. In that year the case of *O'Neil v Building Service Employees International Union, Local No. 6*, 9 Wn.(2d) 507, was decided, and peaceful picketing was thereafter permitted, irrespective of the

employer-employee relationship. However, this holding was not assented to by all of the supreme court judges.

"On February 10, 1941, the United States Supreme Court, in the case of *American Federation of Labor v. Swing*, 312 U.S. 321, 61 S. Ct. 568, held that the constitutional guaranty of freedom of discussion is infringed by the judicial policy of a state to forbid resort to peaceful persuasion through picketing where there is no immediate employer-employee dispute. The effect of the ruling was to hold that a labor union could peaceably convey to the public at large the information that a certain business has been by labor unions declared unfair, and that as long as the picketing was peaceful, it could not be enjoined because there was no immediate labor dispute. After this decision by the supreme court of the United States, our supreme court, by a divided court, as I have stated, held in the *O'Neil* case that the ruling of the United States Supreme Court in the *Swing* case, being a ruling on the construction of the United States constitution, was binding on them and held that the defendant union was justified in picketing an employer who had no employees. This rule was followed up until the *Gazzam* case, referred to above. In that case by a divided court and by reasoning which I find somewhat difficult to follow, our supreme court reverted to the earlier rule of the *Safeway Stores* case, *supra*, as we have seen. It has generally been considered by the bar that the constitution of the United States is what the supreme court of the United States says it is.

"Whether the holding of the *Swing* case is what the law ought to be, or whether the holding in the *Gazzam* case is in reality an overruling of the supreme

court of the United States by a state supreme court upon a construction of the constitution of the United States, by which the state supreme court is bound, is, of course, not for me to say. I am sworn to enforce the law as laid down in the statutes and constitution and as interpreted by the courts of higher resort. The last expression of our supreme court on this question is found in the Gazzam case, and I must assume that I am bound to follow the holding of that case until it be reversed by the supreme court of the United States or changed by our supreme court, and under the holding of the Gazzam case there can be no question in my mind that the plaintiffs, having no employees represented by the defendant union, or any employees whatsoever, are entitled to have the picketing enjoined. I must bow to the superior wisdom of the majority of the appellate court of this state." (Emphasis ours).

Judge Batchelor, who tried the case at bar (No. 364), concurred in the foregoing views of Judge McDonald, saying:

"* * * I have read the able opinion of Judge McDonald in the case of *Hanke v. International Brotherhood of Teamsters*, and I concur in the views expressed in his opinion. I concur in his view that the recent *en banc* decision of the Supreme Court of this state in the case of *Gazzam versus Building Service Employees Union*, 129 Washington Decisions 455, is binding upon the Superior Courts of this state and is controlling in this case as well as the *Hanke* case." (R. 89)

"* * * Peaceable picketing, in my opinion, under the decisions of the Supreme Court, prior to the *Swenson* and *Gazzam* cases, was lawful and not subject to injunction, even though it was coercive in nature.

"Under the decisions in the latter cases, it seems that all picketing is subject to injunction if it is in any nature or any wise coercive. While I find that the picketing here in question in the case at bar violated no statute, was and is free from violence, threats of violence, intimidation or interference with any workers or employees of the plaintiff, it is my duty and I am constrained to hold that, under the decision in the *Gazzam* case and the *Swenson* case, the plaintiff is entitled to a temporary injunction, irrespective of my personal views concerning peaceful picketing." (R. 93)

II.

PETITIONERS DO NOT QUESTION THE STATE'S POWER TO IMPOSE REASONABLE LIMITS UPON THE RIGHT TO PICKET

The Constitution, of course, does not prevent the states from adopting legislation which reasonably regulates or limits the right to picket. Thus legislation limiting the right to picket to the area of the dispute, *Carpenters & Joiners Union v. Ritter's Cafe*, 315 U.S. 722, 86 L. Ed. 1143, 62 S. Ct. 807, does not infringe the Fourteenth Amendment. Nor does a city ordinance which forbids the use of sound amplifying equipment emitting "loud and raucous noises" on the streets. *Kovacs v. Cooper*, 336 U.S. 77, 93 L. Ed. 379, 69 S. Ct. 448. But "it does not follow that the State in dealing with the evils arising from industrial disputes may impair the effective exercise of the right to discuss freely industrial relations which are matters of public concern." *Thornhill v. Alabama*, 310 U.S. 88, 84 L. Ed. 1093, 60 S. Ct. 736.

The legislature of the state of Washington has not seen fit to limit the right to picket to those instances involving employer-employee disputes. On the contrary, in the state's anti-injunction law, it has forbidden the courts of the state to issue injunctions in a labor dispute and, in defining the term "labor dispute", has included those instances where the disputants do *not* stand in the proximate relation of employer and employee. The judicial organ of the state, however, has ignored the statutory definition and has arbitrarily excluded "working men in a particular industry from putting their case to the public in a peaceful way 'by drawing the circle of economic competition between employers and workers so small as to contain only an employer and those directly employed by him.' *American Federation of Labor v. Swing*, 312 U.S. at 326, 85 L. Ed. 857, 61 S. Ct. 568." *Cafeteria Employees Union Local 302 v. Angelos*, 320 U.S. 293, 88 L. Ed. 58, 64 S. Ct. 126.

III.

THE PICKETING WAS NOT UNLAWFULLY EXERCISED

Conceding that the picketing was entirely peaceful, the respondent argues, nevertheless, that it was "coercive" because:

(1) The pickets noted the motor vehicle license numbers of the cars which entered respondent's used car lot; and

(2) They obstructed the driveway to his lot.

The purpose of noting the license numbers was to ascertain if any of respondent's prospective customers

were members of the Teamsters Union and those found to be members were merely reprimanded (R. 64). The Union did not even attempt to communicate with non-members which, of course, it had a right to do. It would have been perfectly lawful for the Union to write to anyone doing business with the respondent, inform him of the nature of the dispute and request him not to patronize the respondent. It is very significant that although the picketing continued for eight months the respondent did not call a single customer or prospective customer to testify that he was in the least "coerced" or "intimidated" by the taking of his license number or by any other activity of the pickets.

The respondent testified that he had to close one of the entrances to his used car lot to avoid injuring pickets who stood there when cars were attempting to enter or leave his premises. While petitioners called no witness to contradict this testimony, the circumstances established it as fantastic: The record shows that there are two driveways or entrances leading to respondent's used car lot, each of which crosses the sidewalk, one at each end. He claims he closed one of them to avoid injuring the pickets! If the pickets were actually trying to block his driveways, closing one driveway would not solve the problem, because they could still stand at the other driveway and subject themselves to injury. But respondent continued to use his other driveway without interference and the picketing continued as before. Respondent offered no explanation in the court below nor does he here.

Furthermore, had the pickets actually engaged in any activity which was actually coercive or unlawful,

that alone should have been enjoined—not *all* picketing. *Milk Wagon Drivers Union v. Meadowmoor Dairies*, 312 U.S. 287. The decree which the Supreme Court of Washington affirmed permanently enjoined the petitioners from “in any manner picketing plaintiff’s place of business” (R. 16). It was as unrestricted as that which this Court “found to transgress state power” in *American Federation of Labor v. Swing*, 312 U.S. 321, 85 L. Ed. 855, 61 S. Ct. 568, and in *Cafeteria Employees Union v. Angelos*, 320 U.S. 293, 88 L. Ed. 58, 64 S. Ct. 126.

In *Cafeteria Employees v. Angelos*, *supra*, the plaintiffs were copartners who operated a cafeteria without outside help. The Union picketed in an “attempt to organize it.” It appeared that the pickets told prospective customers that the cafeteria served bad food, and that in patronizing it, “they were aiding the cause of Fascism” and they “insulted customers who were about to enter” the cafeteria. Under these circumstances it was contended that the picketing was unlawful, although otherwise orderly and peaceful, and the courts below had enjoined the Union from *all* picketing. Answering this contention and reversing the judgment, this Court said at page 295:

“That the picketing under review was peaceful is not questioned. And to use loose language or undefined slogans that are part of the conventional give-and-take in our economic and political controversies—like ‘unfair’ or ‘Fascist’ is not to falsify facts. In a setting like the present, continuing representations unquestionably false and acts of coercion going beyond the mere influence exerted by the fact of picketing, are of

course not constitutional prerogatives. *But here we have no attempt by the state through its courts to restrict conduct justifiably found to be an abusive exercise of the right to picket. We have before us a prohibition as unrestricted as that which we found to transgress state power in American Federation of Labor v. Swing, 312 U.S. 321, 85 L. Ed. 855, 61 S. Ct. 568, supra.*" (Emphasis supplied)

But here there is not a syllable of evidence in the record that any one was actually "intimidated" or "coerced" by any of the picket's activities. If the picketing was "coercive" this was so only because Union members and friends of Union labor refused to do business with the respondent. This, however, did not render it unlawful. The avowed purpose of peaceful picketing is to deprive a non-union concern of union business and patronage. No authority has been called to our attention holding that peaceful picketing will be restrained when it is effective but not when it is ineffective. Obviously, when picketing ceases to be effective no injunction is required to stop it. When advertising brings no results the advertiser soon ceases throwing away his money, and so it is with labor unions. The constitutional guaranty of freedom of speech, however, protects the effective as well as the ineffective exercise of the right.

IV.

**THE PURPOSE OF THE PICKETING WAS ENTIRELY
LAWFUL**

In his brief the respondent concedes that on August 30, 1947, he was a member of the petitioning Union and also a member of the Dealers Association and, as such, was bound by contracts which obligated him to close on Saturdays, and that on that date, while said contracts were still in full force and effect, he began keeping his place of business open on Saturdays. He further concedes that on that day the Union began the picketing complained of which continued, without interruption, until enjoined by the court in this action on May 25, 1948—nine months later. He argues, however, that the purpose of the picketing when the action commenced was not the same as when the picketing began. It is suggested that prior to April, 1948, the picketing was for the purpose of compelling respondent to observe the terms of a binding contract, but when respondent commenced this action that contract had terminated and *the dispute had ended*; and that the Union was then picketing to compel respondent to observe the terms of a new contract to which he was not a party and which would require him to employ a Union salesman and close his place of business at 1:00 P.M. on Saturdays.

If the breaching of respondent's contract created a labor dispute that dispute did not end when the Union and the Dealers Association, of which respondent was formerly a member, entered into a new contract. The reasoning of this Court in *Milk Wagon Drivers Union v. Lake Valley Farm Products*, 311 U. S. 91, 85 L. Ed.

63, 68, we believe, sustains this position. The Court, speaking through Mr. Justice Black, there said at page 99:

"Nor does the controversy cease to be a labor dispute, as the Circuit Court of Appeals thought, because the plaintiff Dairies' employees became organized. This merely transformed the defendants' (union) activities from an effort to organize non-union men to a conflict which included a controversy between two unions."

The new contract between the Dealers Association and the Union was signed on the 14th day of April, 1948. Prior thereto there had been no communication between the parties looking to a settlement of the dispute. Shortly thereafter and about a month before he commenced his action the respondent, upon learning that the new contract required Union salesmen to work on Saturdays until 1:00 P.M., phoned the Union, stating that he was "interested in getting rid of the picket line" and that he would like to discuss the matter. The following day the Business Agent, petitioner Reinertsen, called on respondent and showed him the new contract (R. 48). In reply to respondent's inquiry Reinertsen told him that the dispute could be settled if he complied with this contract. (Reinertsen's testimony concerning this matter is quoted by respondent at page 8 of his brief and will not be repeated here.) This interview was no doubt solicited by the respondent for the purpose of laying the foundation for this action which he commenced shortly thereafter. During the previous eight months he had made no effort to obtain injunctive relief, evidently realizing that the picketing of his business

under the circumstances was entirely lawful. During all of that time he kept open all day on Saturdays while members of the Dealers Association, some of whom employed members of the Union, pursuant to their contract, were required to close. For obvious reasons during that period (when all other dealers were closed on Saturdays) respondent was able to do a profitable business in spite of the picketing. When, however, in April, 1948, the new contract between the Dealers Association and the petitioning Union became effective, permitting opening on Saturdays until 1:00 P.M. (which condition respondent's conduct had forced upon the Union) his business naturally fell off, although he kept open all day on Saturdays. Thereupon he immediately tried to get back into the Union, as it has a right to do, refused to readmit him he commenced this action, and is now trying to make it appear that the Union is "demanding" that he sign a contract to which he was not a party.

Respondent would like to rejoin the Union, which he admittedly betrayed, and operate his business as before—without employing a Union salesman. The Union, as it has a right to do, refused to admit him to membership, but offered to withdraw the pickets if he would sign the identical contract which all members of the Dealers Association, who are not members of the Union, have signed. He claims he can not afford to employ a Union salesman and pay him a seven per cent commission which the other Dealers have agreed to do, but the record shows that he is one of the larger dealers in the Seattle area (R. 36, 60, 74), and he has shown no reason why he can not compete with other

dealers whose businesses are smaller than his. He says in his brief that some dealers who are members of the Union are privileged to do business without employing a Union salesman and that this privilege is now denied to him. He argues that this is unreasonable and discriminatory and to picket his place of business under the circumstances is unlawful. Until he violated his solemn obligation to the Union and breached his contract he also enjoyed this right, and if he is now barred from renewing his membership in the Union he has no one to blame but himself. He still has the right, however, to operate a Union shop under the same contract which the Union has with Dealers who are not members of the Union, and he has always had the right to operate a non-union shop. The respondent seeks equity but, as the record plainly shows, he has not done equity and he came to court with unclean hands.

The picketing of respondent's place of business was in furtherance of a perfectly lawful objective.

Senn v. Tile Layers Protective Union, 301 U.S. 468, 57 S. Ct. 857, 81 L. Ed. 1229;

Bakery & Pastry Drivers, Etc. v. Wohl, 315 U.S. 769, 62 S. Ct. 816, 86 L. Ed. 1178.

In *Wright v. Teamsters Union Local 690* (decided June 24, 1949), 133 Wash. Dec. 207, the Supreme Court of Washington held that peaceful picketing for the purpose of inducing the proprietors of a market to close on Sundays was a lawful objective. The only difference between that case and this is that there the proprietors had in their employ a *single* member of the

Union. Here and in the *Hanke* case (No. 309) the respondents employed no member of the picketing Union and for this reason alone (although the objective of the picketing was entirely lawful), the Supreme Court of Washington found it "coercive" and "unlawful". This finding, we submit, "is so without warrant as to be a palpable evasion of the constitutional guaranty here invoked." (*Milk Wagon Drivers v. Meadowmoor Dairies*, 312 U.S. 287, 294).

V.

THE CIRCUMSTANCES UNDER WHICH RESPONDENT BECAME A UNION MEMBER ARE IMMATERIAL

Respondent argues that in 1945 he was induced to join the petitioning Union by threats to picket his place of business. While this matter is wholly immaterial to the issues there are two answers: In the first place, this statement is factually untrue. It is true that respondent testified the Union threatened to picket him unless he became a member, but it is not true that he was thereby induced to join. He became a member of the Union only after conferring with and accepting the advice of other used car dealers. Concerning this he testified:

"Q. Now, when you joined the Union, I understood you to say you talked to some dealers?

A. That is right.

Q. About it, is that right?

A. That is right.

Q. And they told you that if you wanted to do business in Seattle you better join the Union?

A. That's right.

Q. Is that right?

A. That is right.

Q. And after that you did join the Union?

A. After a little pressure was applied by the officials of the Union. (St. 21-22)

* * * * *

"Q. These dealers you talked with were members, were they, of the Union?

A. Some of them were Union members, I believe.

Q. *Mr. Cline, didn't you have a choice at that time of employing one Union salesman or joining the Union yourself?*

A. *That is right.*" (R. 42)

The truth of the matter is that the respondent voluntarily joined the Union rather than employ a Union salesman, and he did this because he realized that in Seattle, where working people are highly unionized, union patronage is essential to any successful business.

In the second place, if any compulsion had been applied by the Union at that time the court house doors were as wide open to respondent then as they were in May, 1948, when he commenced this action. However, the circumstances under which he became a member of the Union in 1945 are not important. The important thing is that he was still a member in August, 1947, when he violated his obligation to the Union and breached the contract which he had made through the dealers association.

CONCLUSION

In conclusion we respectfully submit that the judicial policy of the State of Washington which arbitrarily forbids peaceful picketing where there is no immediate employer-employee dispute violates the Fourteenth Amendment; and that the holding of that court in this case is directly in conflict with the decisions of this Court in the *Swing*, *Wohl* and *Angelos* cases. The decree here under review should, therefore, be reversed.

Respectfully submitted,

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**In the
Supreme Court of the United States**

October Term, 1949

No. 364

Automobile Drivers and Demonstrators Local Union
No. 882, RALPH REINERTSEN, Its Business Agent,
and J. J. ROHAN, Its Secretary, *Petitioners,*

VS.

GEORGE E. CLINE,

Respondent.

**ON CERTIORARI TO THE SUPREME COURT OF THE
STATE OF WASHINGTON**

BRIEF OF RESPONDENT

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In the
Supreme Court of the United States

October Term, 1949

<div style="border-bottom: 1px solid black; padding-bottom: 5px;">Automobile Drivers and Demonstrators Local Union No. 882, RALPH REINERT- SEN, Its Business Agent, and J. J. ROHAN, Its Secretary, <i>Petitioners,</i></div> <div style="text-align: center; padding: 5px 0;">VS.</div> <div style="border-bottom: 1px solid black; padding-bottom: 5px;">GEORGE E. CLINE, <i>Respondent.</i></div>	}	No. 364
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ON CERTIORARI TO THE SUPREME COURT OF THE
STATE OF WASHINGTON

BRIEF OF RESPONDENTS

OPINION OF THE COURT BELOW

The opinion of the Supreme Court of Washington (R. 17) is reported in Volume 133, Washington Decisions 644, 207 P.(2d) 216.

STATEMENT OF CASE

Respondent is reluctant to burden the court with a statement of the case which must be in some respects repetitious of that set forth in the Petition for Writ of Certiorari. On the other hand, respondent is disturbed by the fact that petitioners' statement neither refers in detail to the intimidating manner in which the picketing was conducted nor, of even more importance, to the union demand which precluded settlement and

which respondent most certainly considers an unlawful union objective and ample justification for the Washington Supreme Court's conclusion that the picketing was coercive.

The respondent is engaged in the business of buying and selling used automobiles (R. 4). He has never employed a member of the petitioning union nor any salesman, doing all the selling himself (R. 6, 36).

The respondent's difficulties with the petitioning union commenced during the year 1945 when respondent was advised by the union through its Business Manager that unless he joined the union he would be accorded the same treatment as a neighbor down the street—picketed and put out of business. Thereafter, and as a result of this threat, respondent joined the union (R. 32).

After respondent joined the union it adopted a policy which required respondent to close on Saturdays. Respondent did not at first comply and his mechanic and handyman, not members of the petitioning union, were ordered off the premises on a Saturday visit to respondent's premises by the Petitioner Reinertsen (R. 33).

Subsequently, in the Spring of 1946, respondent joined a dealers' association in the hope that by doing so a deal could be made with the union to operate on Saturday. This association was composed, in part, of dealers such as respondent who belonged to both the union and the association (R. 75). Respondent paid one year's dues to the association from April, 1946 to April, 1947 (R. 34).

A contract was entered into while respondent was a member of both the association and the union which was in effect at the time picketing commenced on August 31, 1947, although respondent was not then a member of either group. At the time this action was commenced the petitioning union asserts that its demands were then based upon a new contract entered into on April 14, 1948. (R. 73-74).

Respondent, on the 30th day of August, 1947, advised the union through its secretary that respondent intended to open his place of business on Saturday and at the same time requested a withdrawal card from the union (R. 32). On the 31st day of August, 1947, Saturday, respondent did open his place of business and the petitioner, through its members, commenced the picketing complained of.

At that time respondent had two employees, a mechanic and a handyman (R. 36-37). Neither of these employees belonged to the petitioning union nor did it assert jurisdiction over them. These employees immediately quit work (R. 31), respondent's sales fell off (R. 84) and drivers for supply houses refused to deliver automobile parts and materials (R. 31-32). In order to obtain such supplies, respondent was required to transport them in his own vehicle and leave his place of business unattended (R. 41).

As a condition to withdrawing its pickets, the petitioner made two demands upon the respondent: (1) That respondent refrain from opening his place of business on Saturdays. After petitioner's new agreement with the dealers' association on April 14, 1948, this demand was modified to conform to that agreement which

required closing after 1 P.M. (2) That respondent employ a member of the petitioner union and that said employee be compensated by being paid seven per cent on all sales made at respondent's place of business, irrespective of whether or not such sale might be made by respondent.

The picketing of respondent's place of business, while it did not involve physical violence nor actual molestation of any person, carried with it certain elements of intimidation which were described in the uncontroverted testimony of respondent as follows:

"A. They parade up and down the sidewalk part of the time, and part of the time they set on the front of my cars. The part of the time that they parade up and down the sidewalk, they manage to block driveways. I finally closed my main driveway so someone would not get run over there because they were forever stepping in front of an incoming or outgoing car. In addition to that, they've been taking down license numbers of people who stop there, and the method of procedure they use is fighting (frightening) a great many people away. They will get out there, one picket at each end of the automobile and holding up a big placard with a piece of paper on it and hold up a pencil and take down the number. When the owner of the car would ask what this is for they would reply, 'Well, you'll see,' and some customers have said, 'Well, do you think you can cause me trouble,' to which the pickets reply, 'You'll see,' and at this stage of the game most of the customers flee the scene.

Q. What affect has this had upon your business?

A. Well, the effect on the sale of automobiles has been that it has dropped off to practically

nothing, and previous to the picket line I hired a mechanic to keep the automobiles in operating condition. Since the picket line the mechanic fears to work on the premises, so I have no method of keeping my automobiles in operating condition
* * *

Q. What has been your experience in so far as securing the delivery of merchandise to the premises? Have you had any difficulty in that respect?

A. No truck driver will deliver merchandise to the premises * * *.

Q. After these truck drivers have made a delivery and you have received it in front of your premises, have they made any deliveries after that?

A. No, they ceased making deliveries after that." (R. 30-31)

With respect to the union's demand that respondent employ one of its members, Mr. Reinertsen, the Business Agent and one of the petitioners, testified as follows (R. 76, 77):

"Q. Well, now, Mr. Reinertsen, it is your position then that Mr. Cline, in order to stop this picketing, must close Saturdays at one o'clock? That is correct, that is one contention, isn't it?

A. Yes, sir.

Q. That he must hire a Union salesman, that is another one, isn't it?

A. That is right.

Q. And that if he sells cars himself under the contract, he (Fol. 67) must pay the commission to that salesman of seven per cent, is that right?

A. Yes, sir.

Q. Now, you have other dealers, do you not, who

belong to the Union and employ no salesmen? I believe you testified to that effect.

A. Yes, we do.

Q. And they don't have to pay this commission to anyone, do they? They retain it themselves?

A. That's right.

Q. So that by virtue of not being a member of the Union he would be deprived of the privilege of operating his business and keeping the seven per cent for himself?

A. Uh-huh."

Mr. Reinertsen further testified with respect to the payment of the seven per cent as follows (R. 78): 78):

By MR. BASSETT:

Q. The dealers who do not employ salesmen are members of the union, are they not?

A. Yes, sir.

Q. And they conform to the contract that the Union has with all other dealers who do employ members of the Union?

A. Yes.

MR. MCCUNE: With the exception that they retain the seven per cent themselves.

MR. BASSETT: If they don't employ anybody, certainly they retain it.

MR. MCCUNE: It is your position, then, that this man should no longer retain the seven per cent for himself but should pay it to someone else, is that right?

A. That is right.

By MR. BASSETT:

Q. Mr. Reinertsen, if Mr. Cline should employ

a salesman, that would not prevent him from selling, would it? He could still sell?

A. He could still sell, but the commission would have to be paid on everything he sold as well as what the man sold himself.

Q. I see. That is the contract that you have with all the other dealers?

A. That is the contract, yes."

As evidenced by the above testimony, it was therefore the position of the petitioning union that it was justified in singling out Mr. Cline and imposing the seven per cent penalty upon him which it did not impose upon dealers with whom it had contracts and who operated their places of business without the help of union salesmen, for the reason that Mr. Cline was not himself a member of the union.

At the same time respondent notified the union of his intention to open on Saturdays, he advised the union he was withdrawing from its membership and requested a withdrawal card (R. 32). The Washington Supreme Court found that he had not been a member of the union since the time the union had started to picket his place of business in 1947 (R. 24).

Respondent discussed with union representatives the possibility of his again becoming a member of the union and ironing out their differences. He was advised that he could never become reinstated in the union again (R. 48-49). Mr. Reinertsen's version of his conversation with respondent relative to possible settlement of their differences varies but little from that of respondent. Mr. Reinertsen testified that upon a request from respondent he visited respondent's

place of business and went over with him the contract which was entered into with the dealer's association on April 14, 1948. Of their conversation, he testified, in part, as follows (R. 73-74):

"A. He read it over. I think he read every word of it, at least he took plenty of time for it, and he said, 'All right, what will I have to do now?' I said, 'We ask that you sign the contract and live up to the provisions of the contract.' 'Well,' he said, 'what does that mean?' I said, 'It means closing at one o'clock on Saturdays now and of course putting on a salesman.' 'Well,' he said, 'I'm not going to put on a salesman'. 'Well,' I said, 'you wouldn't be complying with the contract unless you did.' So he said 'Well, let me take this and show it to my attorney,' and I said, 'No, I don't think that (Fol: 63) is necessary, Cline. You can probably find one somewhere-else, but I'm not going to leave you the contract unless you sign one,' and that was about all that was said.

Q. Did he say anything about wanting to be reinstated as a member of the Union?

A. He said, 'I can't hire a salesman.' I think he said 'What about myself,' and I said, 'No, that wouldn't do, you know that,' and I don't believe it went any further so far as that goes."

Relative to respondent's affiliating himself with the union as was customarily done by other dealers who did not employ salesmen, Mr. Reinersten testified as follows (R. 74):

Q. Under the union rules and principles of organized labor is a man who works behind a picket line ever eligible for membership?

A. Never."

The effect of the picket line upon respondent's business was, of course, immediately felt. He testified that his volume of business declined \$8,000.00 to \$10,000.00 per month (R. 84). His mechanic and repair man immediately stopped work (R. 31) and he was unable to secure deliveries of merchandise and supplies (R. 31). Mr. Reinertsen testified that union members crossing the picket line were immediately cited before their executive boards and reprimanded (R. 64). Defendant's Exhibit 2 sets forth the union constitution and by-laws and indicates that the penalty might include fine or expulsion from the union (See Article VII, Sections 4-11 of this Exhibit). Mr. Reinertsen further testified that this would apply to all members of the Teamster's Union comprising from 17,000 to 18,000 members in the City of Seattle (R. 63).

Petitioner's statement of the case would indicate (pages 16-17 of Petition) that the Supreme Court of Washington reached its decision solely upon a conclusion that no labor dispute was involved and that the picketing was therefore coercive. Petitioners state in their argument:

"The picketing enjoined by the decree was admittedly peaceful and free from physical coercion or intimidation and when initiated was conducted for the purpose of compelling the respondent to observe a contract which bound him and other used-car dealers in the Seattle area to close on Saturdays. Later, when that contract expired and respondent was not a party to the new contract which required closing on Saturdays after 1:00 P.M., the purpose of the picketing was to induce

respondent to conduct his business in conformity therewith," (Quoted from Petition, page 17)

Such an assertion is very far from accurate and overlooks both the record and the comments made with respect thereto in the Court's decision.

The Washington Supreme Court held the picketing to be coercive and unlawful after it had either set forth in its opinion or alluded to the following:

A. The scope of the petitioning union's picketing activities. The Court set forth portions of the respondent's testimony (R. 22).

B. The nature of the union demands as a condition to removal of its pickets and the fact that the petitioning union demanded that respondent employ a member of the union, such employee to be compensated by being paid seven per cent of all sales made at respondent's place of business, irrespective of whether such sale was made by the employee or by respondent (R. 23).

C. The circumstances under which respondent joined the petitioning union in 1945. In this connection, the Court quoted from the record (R. 20).

COUNTER STATEMENT OF QUESTIONS INVOLVED

In the light of the Record, respondent believes the questions involved before this Court resolve themselves as follows:

1. Is the Supreme Court of a state required to tolerate as an exercise of the right of free speech picketing of an owner operated business employing no person subject to membership in the picketing union where one or more of the following conditions exist:

(a) The picketing as conducted is peaceful in that the pickets neither used force, threatened physical violence nor actually molested any person, but did carry out the picketing in such a manner as to impart to it certain elements of intimidation?

(b) The picketing union demands that the owner of the business employ a union member to carry out duties which the owner has heretofore performed himself and which essentially comprise the entire business; further stipulating that if the owner performs any of such work himself he pay a penalty to the union member even though it may not be earned, a condition which is not exacted from other self employed operators?

Respondent does not believe that in view of either the manner in which the picketing was carried out or its purpose this case presents to the Court the basic issue of whether or not the doctrine of free speech as applied to picketing has been carried to a point where it infringes upon the right of self-employed individuals to engage in free enterprise in these United States.

SUMMARY OF THE ARGUMENT

Picketing is more than the mere exercise of free speech and this Court has recognized the paramount right of the states in the exercise of their police power and in the interest of society as a whole to place reasonable restraints upon its use (pages 13 to 27).

The facts of the instant case highlight the dual aspects of picketing (pages 17 to 21). The picketing here enjoined was both carried on in a manner calculated to intimidate and has an improper and unlawful objective.

The Washington state legislature has by its little Norris-LaGuardia legislation indicated that picketing, even in a labor dispute, may be unlawful and has left the test of unlawfulness to the court in which an injunction is sought. Here the court found no labor dispute and the legislation does not apply. Nevertheless, it is indicative of the legislative intent to establish a minimum area within which the court in the absence of certain findings, including unlawfulness, could not enjoin. By inference and traditionally, the courts also have the right to determine what constitutes unlawful conduct in picketing not involving a labor dispute (pages 27 to 31).

The *Wohl* and *Angelos* decisions can be distinguished from the instant case, and the *Giboni*, *Wagshall* and other cases cited, lend support to respondent's conclusions (pages 31 to 37).

The unlawful purpose test as applied to the instant case sets it apart from other decisions of this court and clearly indicates the propriety of the injunction.

ARGUMENT**The Dual Aspects of Picketing**

The Washington Supreme Court decision rests squarely on the conclusion that the union in the manner of picketing and union objective was exercising something more than free speech. In so holding, the Supreme Court of Washington is in accord not only with the decisions of this Court, but also with the majority of other jurisdictions in this country.

At this date, there can be little doubt that picketing in its speech aspects is accorded the protection of the First and Fourteenth Amendments. This doctrine (for such it has become) linking picketing with the Constitutional mandate of free speech is clearly and logically applicable where picketing is essentially communication of ideas. But, true to the pattern of the whole of our law, that to be workable it must always remain a compromise between complete freedom of action and expression, on the one hand, and the common convenience of all, on the other, there are certain limitations to this abstract doctrine. And these limitations apply not only where picketing is concerned, but to speech in a purer state as well. Stated broadly, these limitations appear to be nothing more than that speech, and particularly picketing, must be pursued by lawful means, and for lawful purposes, traditionally in accord with the equitable theory of balancing the respective competing interests of the participants with respect to society as a whole.

The Supreme Court of the United States in identifying picketing with free speech has never in any

instance purported to create a new concept of free speech, nor has it ever indicated as its view that "picketing free speech" is endowed with any rights or immunities not accorded to other forms of communication.

On the contrary, this Court has, from the inception of this assimilation of picketing as free speech, always recognized the dual aspect of picketing and boycotting as both a form of speech and conduct. It is the latter element which allows it to be regulated to an extent not permissible in the case of more orthodox forms of free speech. As the Court stated in its unanimous decision in the case of *Giboni v. Empire Cold Storage & Ice Co.*, 336 U.S. 490, 69 S. Ct. 684, 93 L. Ed. 649:

"Neither *Thornhill v. Alabama*, 310 U.S. 88, 60 S. Ct. 736, 84 L. Ed. 1093, nor *Carlson v. California*, 310 U.S. 160, 60 S. Ct. 746, 84 L. Ed. 1104, both decided the same day, supports the contention that conduct otherwise unlawful is always immune from state regulation because an integral part of the conduct is carried on by display of placards by peaceful picketers."

In both these cases, the Court struck down statutes which banned *all* dissemination of information by people adjacent to certain premises, pointing out that the statutes were so broad that they could not only be utilized to punish conduct plainly illegal, but could also be applied to ban all truthful publications of the facts of a labor controversy.

But in the *Thornhill* opinion, 310 U.S. 88, 103, 104, 60 S. Ct. 736, 745, 84 L. Ed. 1093, the Court was careful to point out that it was within the province of states,

"to set the limits of permissible contest open to industrial combatants."

supra at U.S. 489, 499. Again in the *Giboni* case, *supra*, the Court said,

"Appellants also rely on *Carpenters' Union v. Ritter's Cafe*, 315 U.S. 722, 62 S. Ct. 807, 86 L. Ed. 1143, and *Bakery Drivers v. Wohl*, 315 U.S. 769, 62 S. Ct. 816, 86 L. Ed. 1178 decided the same day. Neither lends support to the contention that peaceful picketing is beyond state control."

The Court's opinion in the *Ritter* case, *supra*, approvingly quoted a part of the *Thornhill* opinion, *supra*, which recognized broad state powers over industrial conflicts.

There have been other references by the members of this Court to picketing as a dual institution. In a concurring opinion in the *Wohl* case, *supra*, at 310 U.S. 776, Mr. Justice Douglas joined by Messrs. Justices Black and Murphy said,

"Picketing by an organized group is more than free speech, since it involves patrol of a particular locality and since the very presence of a picket line may induce action of one kind or another, quite irrespective of the nature of the ideas which are being disseminated."

Respondent does not read into or understand these statements as meaning that there is anything inherently improper in picketing as a union activity. Nor is it the purpose here to impress such a view upon this Court. The respondent merely offers the suggestion that the non-speech aspects of picketing as recognized by this Court in all of its decisions dealing with the problem do not stand rooted in the First Amendment

of the Federal Constitution. This being the case, the states' rights to regulate this aspect of picketing are similar to their power of regulation over other concerted activities that do not have the special Constitutional immunity granted by the First Amendment—and recognizing always that even rights protected under that Amendment have their own limitations. Such a suggestion is by no means novel, as our perusal of the opinions both of this Court and others would indicate. It is only the speech aspects of picketing that the Court assimilated with the First Amendment liberties when it handed down the *Thornhill* decision. This seems to be implicit in the decision, the Court saying:

“It is true that the rights of employers and employees to conduct their economic affairs and to compete with others for a share in the products of industry are subject to modification or qualification in the interests of society in which they exist. This is but an instance of the power of the State to set the limits of permissible contest open to industrial combatants.” 310 U.S. at 103

That the “conduct of their affairs” referred to in this statement of the Court means activities other than speech activities, seems clearly indicated by what immediately follows, which reads,

“It does not follow that the State in dealing with the evils arising from industrial disputes may impair the effective exercise of the right to discuss freely industrial relations which are matters of public concern.”

Ibid. This latter statement would appear to be patently inconsistent with the former but for the Court's appreciation of the dual nature of picketing.

The most recent recognition by this Court of the conduct implications of free speech is to be found in the *Empire* case, *supra*. That case held that states have "paramount" power to regulate and govern the manner in which certain trade practices shall be carried on, and that nothing in the Constitutional guarantees of free speech compels a state to apply or not to apply its anti-trust restraint law to groups of workers, businessmen or others. And although the decision rests upon a state anti-trust statute, the principle announced is clearly applicable to all labor activity, the Court saying,

"It is true that the agreements and course of conduct here were as in most instances brought about through writing and speaking. But it has never been deemed an abridgement of freedom of speech or press to make a course of conduct illegal merely because the conduct was in part initiated, evidenced or carried out by means of language, either spoken, written or printed. See *e.g. Fox v. Washington*, 236 U.S. 273, 277, 35 S. Ct. 383, 384, 59 L. Ed. 573; *Chaplinsky v. New Hampshire*, 315 U.S. 568, 62 S. Ct. 766, 86 L. Ed. 1031. Such an expansive interpretation of the constitutional guarantees of speech and press would make it practically impossible ever to enforce laws against agreements in restraint of trade as well as many other agreements and conspiracies deemed injurious to society." 336 U.S. 490, 502, 69 S. Ct. 684, 691, 93 L. Ed. 649, 656.

The Dual Aspect of Picketing as Applied to the Instant Case.

Pure free speech played little part in the effort of the union to, as indicated in its Petition, "persuade

respondent, by use of economic pressure" (page 22). Counsel for respondent has a strong and possibly out-moded belief that an exercise of free speech, while it might not be conducted with all the finesse of a Dale Carnegie graduate, somehow contemplates the imparting of information calculated to persuade, after which the recipient as a free agent must decide for himself whether or not he will, if picketing is concerned, cross the line. If only free speech were involved, his conscience and no other factor would influence this decision.

Beyond the usual assertion that respondent was "Unfair" as set forth on petitioning union's placards, no attempt was made in any way to convey to the public the reason for the picketing or the merits of the union position. On the contrary, the picketing union relied entirely on the aspects of picketing unrelated to free speech. The picket line became a sacred wall to be worshipped from one side only and from 17,000 to 18,000 (R. 63) residents of Seattle could not cross it without being immediately cited before their Unions (R. 64). The Union's Business Manager testified that anyone who worked behind it was thereby forever banned from union membership (R. 74). Deliveries to respondent's premises were abruptly halted (R. 31). Persons who asked why their automobile license numbers were being taken down were informed, "You'll see," and as stated by respondent, "at this stage of the game most of the customers flee the scene" (R. 30-31).

Mr. Reinertsen testified that the license numbers, except for those of union members were filed in the

wastebasket (R. 63). Respondent submits that the fact that the pistol held to the victim's head is unloaded makes the crime no less an assault with a deadly weapon.

Aside from the manner in which the picketing was conducted, and of even more importance in respondent's opinion, was the end sought by the petitioning union.

Respondent in this connection wishes to call attention to the fact that the Petition for Writ of Certiorari indicates that the union's only desire was that respondent refrain from operating his business on Saturdays, which demand was modified after April 14, 1948 to conform to a new contract requiring closing at 1:00 P.M. on Saturdays (page 15). Nothing could be further from the truth than such an impression.

Respondent believes that whether or not a union has an inviolable right to picket a self employed individual to compel him to conform in his personal hours of work to the terms of a contract between the union and an association of employers and self employed individuals, some of whom belong to both groups, and to which contract the picketed individual is not a party, presents an issue as vital to individual enterprise and liberties as any that put tea in Boston harbor.

On the other hand, respondent does not consider that this case must turn upon so basic an issue. A settlement of the differences between respondent and the petitioning Union was precluded by the Union's demand that respondent hire a salesman to, in effect, take over respondent's duties.

Petitioner Reinertsen's testimony on this point and relating to a conversation with respondent taking place shortly after the union had signed the April 14, 1948 contract was, in part, as follows (R. 73):

"I said, 'We ask that you sign the contract and live up to the provisions of the contract.' 'Well,' he said, 'what does that mean?' I said 'It means closing at one o'clock on Saturdays' now and of course putting on a salesman.' 'Well,' he said, 'I'm not going to put on a salesman.' 'Well,' I said, 'you wouldn't be complying with the contract unless you did.'"

The salesman to be so "put on" would have received as compensation seven per cent of all sales made. The fact that the sale might be made by respondent would make no difference (R. 77). If respondent sold a car for \$1,000.00, his percentage of net profit would have run from "eight and one-third down to months when I lose money" (R. 79). Under the union demand, seven per cent or \$70.00 of that amount would be paid to a feather bedded salesman.

The petitioning union concedes that the other self employed dealers are permitted to join the union and keep the seven per cent themselves (R. 77-78). Respondent, they argue, having worked behind a picket line, is forever barred from union membership (R. 74) and this being the case, they are justified in singling him out from among his other fellow dealers to impose this penalty.

In effect, the union is exercising all the prerogatives of a police judge giving a vagrant two hours in which to leave town. The respondent's occupation is that of

an automobile salesman. He had been in business over four years (R. 30), employing no member of the petitioning union and doing all the selling himself. The union objective is to require him in a competitive market to charge \$70.00 more on each \$1,000.00 of sales to realize the same profit as his self-employed competitor. The result is obvious. If the union's position is sustained, either a change of climate or of occupation will be unavoidable for respondent.

One of the smallest cogs in our economic system has become engaged with one of its biggest gears. Unless some relief is afforded, it will not be a pleasant sight to stand back and watch the teeth fall out.

Recognition of the States Power to Impose Reasonable Limits Upon the Right to Picket

Through its basic understanding of the nature and character of picketing, this Court has in no instance been forced to depart from its oft repeated Constitutional doctrine that in construing state statutes, the interpretation of the state court of last resort is binding upon the Federal courts. Nor has it become necessary for the Court to render the application of this principle nugatory in cases involving the interpretation by the state courts of "labor disputes" within the meaning of local statutes, *Lauf v. Shinner*, 303 U.S. 323, 58 S. Ct. 578, 82 L. Ed. 872.

Under this view of state policy, the decisions including and following the case of *Senn v. Tile Layers Protective Union*, 301 U.S. 468, 57 S. Ct. 857, 81 L. Ed. 1129, are completely harmonious with the

latest exposition by the Court in the *Giboni* case, *supra*, of its approach to the picketing problem. The *Senn* case was the first decision which linked picketing with free speech. The State court denied an injunction to a self-employed craftsman who had sought to restrain picketing of his place of business. This Court affirmed, upholding the state anti-injunction policy.

In the next two cases involving the right to picket before this Court, *Thornhill v. Alabama*, *supra*, and *Carlson v. California*, 310 U.S. 106, 60 S. Ct. 746, 84 L. Ed. 1104, it was held that a broadly drawn statute or city ordinance prohibiting all picketing is ON ITS FACE a violation of the due process clause of the Fourteenth Amendment. In so doing, the Court made no refutation of the states' power in this field, but, rather, molded it to fit the established pattern for review of any state policies pertaining to rights claimed under the Federal Constitution by virtue of the Fourteenth Amendment. The particular legislative attempts at regulation were found to be so all inclusive as to be incapable of definite application—therefore lacking in that element of certainty so essential to the preservation of basic rights and liberties.

The natural symmetry of the Court's reconciliation of the Tenth and First Amendments to the Federal Constitution became even more apparent after the decision in *Milk Wagon Drivers' Union of Chicago v. Meadowmoor Dairies, Inc.*, 312 U.S. 287, 61 S. Ct. 552, 85 L. Ed. 836, 132 A.L.R. 1200. In that case, the Court found a "background of violence" which it re-

fused to separate from the other aspects of the picketing, affirming the state court.

The companion case to the *Meadowmoor* case, *supra*, that of *American Federation of Labor v. Swing*, 312 U.S. 321, 61 S. Ct. 568, 85 L. Ed. 855, it is submitted, represents probably the most emphatic illustration in this line of decisions of the whole underlying Constitutional postulate of "dual sovereignty." The case is significant because it indicates this Court's unwillingness to overrule a state court's finding on the merits that the particular acts constituted unlawful conduct. Rather, this Court preferred to consider the all-embracing language of the state court's dicta as exemplifying the state policy. As stated by Mr. Justice Frankfurter, the issue was there determined to be as follows:

"More thorough study of the record and full argument have reduced the issue to this: is the constitutional guarantee of freedom of discussion infringed by the Common Law policy of a state forbidding resort to peaceful persuasion through picketing merely because there is no immediate employer-employee dispute?"

The Court answered affirmatively. On the basis of the above statement of the issue, it clearly appears that this Court was stressing the holding in its entirety including the dicta in the court below and thereby rendering the decision of the court below all inclusive as to stranger picketing and likening it to the situation presented by all inclusive legislative enactment in the *Thornhill* case. The *Swing* case therefore stands for the principle that it is a deprivation of the right of

free speech for a court to flatly conclude that all stranger picketing is unlawful.

As already heretofore pointed out, the Washington Court in the instant case considered both the manner in which the picketing was conducted and the purpose of the picketing before finding the picketing to be coercive and unlawful in light only of the factual situation as presented by the particular case.

The next anti-picketing injunction case coming before this Court was *Bakery & Pastry Drivers & Helpers Local 802, etc. v. Wohl*, 315 U.S. 769, 62 S. Ct. 807, 86 L. Ed. 1178, involving a controversy between a union of bakery wagon drivers and a group of non-union peddlers of bakery products. In reversing the judgment of the Court of Appeals of New York, this Court said:

"The record in this case does not contain the slightest suggestion of embarrassment in the task of governance; there are no findings and no circumstances from which we can draw the inference that the publication was attended or likely to be attended by violence, force or coercion, or conduct otherwise unlawful or oppressive; and it is not indicated that there was an actual or threatened abuse of the right to free speech through the use of excessive picketing. A State is not required to tolerate in all places and all circumstances even peaceful picketing by an individual. But, so far as we can tell, respondent's mobility and their insulation from the public as middlemen made it practically impossible for petitioners to make known their legitimate grievances to the public whose patronage was sustaining the peddler system except by the

means here employed and contemplated; and those means are such as to have slight, if any, repercussions upon the interests of strangers to the issue." *Ibid* at 315 U.S. 775.

The *Wohl* case stands primarily as an illustration of the rule that a finding that there is no "labor dispute" under the states' anti-injunction law, does not in itself warrant a restraint on picketing. Under this decision, we note that no fault was found with the state law as enunciated in its Civil Practice Act. Rather, the admonition is directed to the State Court for failing to determine all the elements necessary under that act to reach a conclusion that no labor dispute is involved—clearly a departure by the state court itself from the public policy of its own jurisdiction. Moreover, the opinion of this Court goes on to say by way of dictum that if the state court had followed the mandates of its legislature as to the requisite findings and had found the union's objective to be unlawful, the injunction might have been issued.

It would be folly to assert that *Cafeteria Employees Union v. Angelos*, 320 U.S. 321, 64 S. Ct. 126, 88 L. Ed. 58, did not initially leave counsel for respondent pale and shaken. On its face, the decision is irreconcilable with both the prior and subsequent holdings of this Court if the strong language expounding the Constitutional guarantee is considered apart from its context. In the light of further examination both of the decision and the proceeding in the state court, we submit that the decision is not adverse to the theory of the instant case nor is it in conflict with those cases following the *Senn* decision.

In the *Angelos* case, the Court examined the record, looked behind the findings of "no labor dispute" and "coercion" and rejected the findings of the lower court. The holding was that the states cannot too narrowly define the limits of industrial dispute by acting arbitrarily. In the *Angelos* decision, this Court found the New York Court to have been acting arbitrarily. The New York Court had based its decision primarily upon the manner in which the picketing was conducted. This Court considered the acts complained of as being too "isolated and episodic" to constitute coercion. No other unlawful acts or purposes being alleged, the Court reversed, there being no reasonable basis upon which the Court could base an affirmance.

A further and more complete discussion of the *Angelos* case is to be found on page 33 of this brief.

The next full statement by this Court wherein the states' "paramount power" in this field is reaffirmed is found in *Giboni v. Empire, supra*, where, in answer to the union's contention that the injunction issued by the state trial court was an unconstitutional abridgment of free speech, the court said at 336 U.S. 502, 69 S. Ct. 691, 93 L. Ed. 656:

"Missouri, acting within this power, has decided that such restraints of trade as petitioners sought are against the interests of the whole public. * * * It is not for us to overrule this clearly adopted state policy."

Up to this point, respondent has confined his argument to pointing out the propriety of state regulation in the field of picketing and the finality of a state

tribunal's exposition of local statute, subject always, of course, to review on the basis of reasonableness. Concededly, since states have "paramount power" in the regulation of the economic and trade practices within their borders as limited by the commerce clause as well as the due process and equal privileges and immunities clause of the Fourteenth Amendment, it becomes pertinent where rights are claimed under the First Amendment as incorporated into the Fourteenth Amendment to determine whether the state court in this case was enjoining the picketing as speech or as unlawful and tortious conduct which was so intermeshed with the communication elements as to make the true speech elements inextricable for purposes of severing them from those other elements subject to regulation.

Effect of State Legislation as Expression of Policy

This state, acting through its legislature, has indicated its ideas of what the minimum area of "free speech" in labor disputes should be (Remington's Revised Statutes of Washington, 7612, Secs. 1-15), and has molded these mandates along the identical lines pursued by Congress in the Norris-LaGuardia Act. In so doing, it purported only to delineate the lines across which the courts through the exercise of their equitable powers could not cross. However, it did not purport to legislate with respect to free speech in situations not falling within the purview of the statute, but preferred to leave the protection of the individual in such situations to the courts. The reasonableness of this legislation is not here in issue, nor is its con-

titutionality. It is important only in this respect—it is a statutory guide to the public policy of this jurisdiction.

Section seven of this act reads in part as follows:

“No court of the State of Washington or any judge or judges thereof shall have jurisdiction to issue a temporary or permanent injunction in any case INVOLVING OR GROWING OUT OF A LABOR DISPUTE, as herein defined, except after hearing the testimony of witnesses in open court (with opportunity for cross examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and EXCEPT after findings of fact by the court, to the effect:

“(a) That UNLAWFUL acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained. * * *”

Section 13(c) of the act defines a “labor dispute” as including:

“Any controversy concerning terms or conditions of employment or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.”

The Washington trial court found, and the State Supreme Court affirmed, that no labor dispute existed within the meaning of the statute. The statute therefore has no direct application to the instant case. Its importance lies in the fact that while it specifically

enumerates certain activities which cannot be enjoyed it nowhere attempts to define, even in a labor dispute, what constitutes "unlawful acts" within the meaning of Section 7612, Subsection 7 (*supra*). Whether a given act is unlawful must be determined by the court under the facts of each case.

Viewed from any angle, it clearly appears from the above quoted provisions that both the Washington legislature and Congress have recognized that picketing, although "peaceful" may yet be "coercive" and enjoinable. That picketing, although 'peaceful' may be 'unlawful' and 'coercive' and therefore not stand within the protection of the mantle of the First and Fourteenth Amendments of the Federal Constitution has been recognized by this Court in applying the Federal Norris-LaGuardia Act. *Bakery Sales Drivers Local Union No. 33, et al. versus Wagshal*, 333 U.S. 437, 68 S. Ct. 630, 92 L. Ed. 792.

It should further be noted that Section 7612, Subsection 2 of the Washington "Little Norris-LaGuardia Act" reads in part as follows:

"In the interpretation of this act and in determining the jurisdiction and authority of the courts of the State of Washington, as such jurisdiction and authority are herein defined and limited, the public policy of the State of Washington is hereby declared as follows:

"Whereas, under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of con-

tract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, *though he should be free to decline to associate with his fellows*, it is necessary that he have full freedom of association, self organization, and designation of representatives of his own choosing * * *."

This legislation was passed in 1933. As a statement of policy it could well be said to be an expression of the liberty which any individual might expect to have at common law or under the First and Fourteenth Amendments. Perhaps in no small measure this accounts for the fact that the Court set forth in its opinion (R. 20) respondent's account of the circumstances under which he was coerced into joining the petitioning union. Possibly the Court felt that the petitioning union, having tossed the lighted squib and set up an unfortunate chain of circumstances, should assume some responsibility for the ultimate explosion.

A further Washington statute deserves mention as illustrative of the policy of this state. It reads:

"Whenever two or more persons shall conspire—

"(5) To prevent another from exercising any lawful trade or calling, or from doing any other lawful act, by force, threats or intimidation, or by interfering or threatening to interfere with any tools, implements or property belonging to or used by another, or with the use of employment thereof; or

"(6) To commit any act injurious to the public health, public morals, trade or commerce, or for the perversion or corruption of public justice or the due administration of the law; or

"(7) To accomplish any criminal or unlawful purpose, or to accomplish a purpose, not in itself criminal or unlawful, by criminal or unlawful means. Every such person shall be guilty of a gross misdemeanor." Remington's Revised Statutes of Washington, 2382, Sections 5, 6 and 7.

Supplementary is Remington's Revised Statutes, 2383:

"In any proceeding for (a) violation of Section 2382, it shall (not) be necessary to prove that any overt act was done in pursuance of such unlawful conspiracy or combination."

This legislation has been held to apply to labor unions: *Sears v. International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, Local No. 524*, 8 Wn.(2d) 447, 112 P.(2d) 850 (1941).

Wohl and Angelos Decisions Distinguished from Instant Case

In *Bakery & Pastry Drivers & Helpers v. Wohl*, *supra*, the New York Court had enjoined picketing on the basis that no labor dispute existed as defined by the State Civil Practice Act, but this Court invalidated the injunction, declaring:

"one need not be in a labor dispute as defined by state law to have a right under the Fourteenth Amendment to express a grievance in a labor matter by publication unattended by violence, coercion, or conduct otherwise unlawful or oppressive." 315 U.S. 769, 744, 62 S. Ct. 816, 818, 36 L. ed. 1178, 1183.

A further qualification was expressed in the opinion:

"* * * there are no findings and no circum-

stances from which we can draw the inference that the publication was attended or likely to be attended by violence, force or coercion, or conduct otherwise unlawful or oppressive, and that it was not indicated that there was an actual or threatened abuse of the right to free speech through the use of excessive picketing. A state is not required to tolerate in all places and all circumstances even peaceful picketing by the individual." 315 U.S. 769, 775, 62 S. Ct. 816, 818, 86 L. Ed. 1178, 1184.

The Court further intimated that the picketing could have been enjoined if it were for an illegal end by stating:

"The respondents say that the basis of the decision below was revealed in a subsequent opinion of the Court of Appeals, where it was said with regard to the present case that 'we have held that it was an unlawful labor objective to attempt to coerce a peddler employing no employees in his business and making approximately 30 dollars a week, to hire an employee at 9 dollars a day for one day a week.' *Opera-on-Tour v. Weber*, 285 N.Y. 348, 347 cert. denied, 314 U.S. 615. But this lacks the deliberateness and formality of a certification and was uttered in a case where the question of the existence of a right to free speech under the Fourteenth Amendment was neither raised nor considered." 315 U.S. 769, 744, 62 S. Ct. 816, 810

The *Wohl* case, therefore, stands for the proposition that a state cannot so define a "labor dispute" as to exclude a dispute between a union and a retailer selling products handled by peddlers in the same industry as a union, merely because none of the union

members were employed by the retailers and having done so in the absence of any coercion or conduct otherwise unlawful or oppressive, the Supreme Court will refuse to draw any inference that the picketing was contrary to the law of the jurisdiction.

This dicta from the *Wohl* case, *supra*, as well as dicta taken from *Thornhill v. Alabama*, *supra*, was elevated to the status of a flat holding in *Carpenters & Joiners Union of America v. Ritter's Cafe*, *supra*.

In that case, the state's right to limit picketing to the "area of the industry" within which the labor dispute arises was upheld, and the Court ruled that picketing of an establishment which industrially had no connection with the dispute may be enjoined. Since the Court found no "violence, force or coercion" as far as the acts themselves were concerned, the *Ritter* case confirmed the line of authority already well established in state courts that peaceful picketing for unlawful object is not protected by the First and Fourteenth Amendments and the state could validly hold this picketing of a "neutral" illegal under its police power without conflicting with the constitutional doctrine.

In *Cafeteria Employees Union v. Angelos*, 320 U.S. 293, 64 S. Ct. 125, 88 L. Ed. 58, this Court reversed the New York Court and the picketing in these two consolidated cases was held to be protected by the Constitution's free speech guarantees. The opinion first quoted the *Senn* case dictum, 320 U.S. at 295, quoting 301 U.S. 468, 478,

"members of a union might, 'without special authorization by a state, make known the facts of

a labor dispute for freedom of speech is guaranteed by the Federal Constitution'."

Then followed this statement,

"Later cases applied the Senn doctrine by enforcing the right of workers to state their case and to appeal for public support in an orderly and peaceful manner regardless of the area of immunity as defined by state policy." 320 U.S. at 295

In support of this statement, the *Swing* and *Wohl* cases were cited. The *Ritter* case was not mentioned.

This statement appears on its face ~~most~~ damaging to respondent's contentions as offered herein. Contemplated in the abstract, it would seem insurmountable. But considered in the light of the factual situation presented to the Court by that case, it is by no means antithetical to affirmance in the instant case. In the *Angelos* case injunctions had been granted which barred a union from picketing two cafes which were being operated by their owners without employed help. The New York Court of Appeals in a 4-3 decision had affirmed the judgments granting these injunctions on the ground that there ~~was~~ no labor dispute present since there were no employees involved in either cafeteria and the picketers "unfair" signs were, therefore, deliberately false and misleading; the picketers had been insulting and conducted themselves unlawfully in that some of them had stated that "patronage of the cafes would aid the Fascist cause" and that the food served was "bad." Respondent here notes and emphasizes that the New York Court made no attempt to reach its conclusion on the basis of the PURPOSE of the picketing—which was to unionize these

cafeterias. Whether it could so have done or not is immaterial—the important fact being that unlawfulness of purpose was not before this Court.

Pursuing the factual situation somewhat further, as this Court obviously did, we find that the cafeterias at one time had been operated with employed non-union help. Thereafter, they had drawn up articles of partnership which brought the former employees into the status of partners. The union had contended in the trial court that these articles of partnership were a fraud and that most of the so called owners who were the previous non-union employees were actually in the same position as when they had served openly as employees. The union alleged that this fictitious partnership had been resorted to in order to take advantage of the state's rule that self employed business men who did not have any employed assistance could not be pressured by a union to employ help. The trial court had found against the union's contentions. See *Angelos v. Mesevich*, 289 N.Y. 498, 46 N.E.(2d) 903.

This Court found that the use of such words as "unfair" and "Fascist" were merely loose language and not 'falsification of facts' and that the acts themselves were not carried on in coercive manner. The incidence of abuse through insult were also found to be too "episodic and isolated" to justify suppressing the right of free speech.

In summary of the *Angelos* decision, it may be remarked that the actual economic situation at issue was almost identical (if one is willing to overlook the union's contentions as to the actual status of the "em-

ployers" in the *Angelos* case) with that of the *Senn* case, i.e., an operating owner picketed by a union in an endeavor to induce him to cease self operation and to employ union assistants. But there is no similarity in either to the case at hand. Here respondent is a self employed operator as in the *Senn* case. The objective sought by the picketing there was to further unionize the craft in which the operator was engaging and to compel him to sign a union contract, a valid end under state policy of that state as respondent has heretofore indicated. The objective of the picketing in the *Angelos* case was likewise to compel unionization of the "quasi employers." At this point all resemblance between these cases and the one now before this Court ceases. The union in the instant case was not seeking to persuade the operator (respondent) to join the union. In fact, respondent was denied membership (R. 74).

The union here was attempting to force respondent to employ a union salesman and pay him a tribute of seven per cent on all sales made on respondent's lot, whether made by that salesman or not, and to conform to the hours of operation which the union had established through a contract with the dealers' association, of which respondent was not a member. The only alternative was to be picketed out of business.

In the *Giboni* case, *supra*, this Court took occasion to reaffirm its position that picketing, although peaceful, may be coercive and unlawful. There, in an effort to organize non-union ice peddlers an ice truck drivers' union obtained agreements from Kansas City ice wholesalers to refrain from selling ice to independent

peddlers. Upon the refusal of the Empire Storage and Ice Co. to enter into such an agreement, a picket line was thrown around the company's establishment. Truck drivers working for Empire's customers refused to cross the line, thereby, as the trial court found, cutting off 85% of the company's business. Empire obtained an injunction on its complaint that the efforts of union members to restrain it from selling to non-union drivers were in violation of the Missouri anti-trust statute, and that an agreement by Empire to refuse to make such sales would violate the same statute. The state supreme court affirmed and this Court unanimously affirmed.

Although the decision rests upon a state anti-trust statute, the principle announced is, as we have asserted earlier in this argument, clearly applicable to all labor objectives and the common law test of what constitutes an "unlawful" labor objective is used by this Court. This follows because of the power vested in the courts to exercise their equitable remedies to prevent conduct inimical to the public interest, and it is for the courts to determine through the exercise of these powers whether the conduct is unlawful on the basis of the facts before them. Acts and conduct by labor unions which would be held infractions in one situation might not be so considered in another for the purpose of injunction.

Under the Sherman Act, which the Court likened to the Missouri statute in the *Gibson* opinion, small doubt may be entertained that the Court is applying its test of reasonableness in considering the circumstances. Certainly the Sherman Act itself is broad

and unqualified. Nor does it contain any express exemption for any class of people. Nor does the definition of a "conspiracy" within the terms of the Sherman Act, Section 1 of Title 15, as a combination of two or more persons by concerted action to accomplish a criminal or "unlawful" purpose, or to accomplish some purpose not in itself criminal or "unlawful" by criminal or "unlawful" means, give any indication that any other than a "common law" concept is to be applied in a given determination. This Court has, further, not hesitated to apply its conception of "unlawfulness" under the Sherman Act to union activity to find an absence of legitimate union objectives and this, in spite of the Clayton Act, United States Code Title 15, Section 12, *et seq.*; Code Title 18, Sec. 402, 660, 3285, 3691; Code Title 29, Sec. 52, 53, 38 Stat. 730. Under that act, labor unions were not to be enjoined under the anti-trust laws from "lawfully carrying out the legitimate objects thereof." Pickets were not to be enjoined "from attending at any such place where any such person or persons may lawfully be," and secondary boycott was legalized, but only when carried on "by peaceful and lawful means." These provisions enabled the courts to decide what was "lawful" or not under the traditional case-to-case approach. And the same result has been obtained under Section 105 of the Norris-LaGuardia Act, Code Title 18, Sec. 3692, Code Title 29, Sections 101-115, 47 Stat. 70 by a finding of "unlawful" conduct as permitted under other sections of that act, *Allen Bradley Company v. Int. Brotherhood of Electrical Workers*, 325 U.S. 797, 65 S. Ct. 1533, 89 L. Ed. 1939; *Colum-*

bia River Packers' Assn. v. Hinton, 315 U.S. 143, 62 S. Ct. 520, 86 L. Ed. 750.

Further pointing up our contention that the "common law" test is the test applied where the statutory wording is "unlawful" or "illegal" are the decisions of this Court in controversies arising under the federal Norris-LaGuardia Act which permits injunction to issue where "unlawful" acts are found. *Bakery Drivers Local Union No. 33 v. Wagshal*, 333 U.S. 437, 68 S. Ct. 639, 92 L. Ed. 792, is a good example. There this Court found no legitimate union objective, therefore no labor dispute, although the conduct complained of and interdicted was in violation of NO statute and the means employed were entirely peaceful.

The recent case of *Saveall v. Demers*, 322 Mass. 70, 75 N.E.(2d) 12, is illustrative of the reasoning used by the courts to determine, in the first instance, that union conduct is "unlawful" as not being directed to legitimate labor objectives and, therefore beyond the protection of the Constitutional right of "free speech" and therefore subject to restraint. Applying this test to the facts before it, the Court said:

"This is not a controversy between employer and employees or between employer interest and employee interest. The plaintiff and a majority of the defendants are proprietors of one-man barber shops and employ no one. Those of the defendants who are employees of master barbers are one stage farther removed from any direct interest in the prices charged by the plaintiff than are the defendants who are proprietors of shops and such employees can have no greater

rights than the proprietors have. The controversy may therefore be treated as one between a group of proprietors and a single proprietor who refuses to accept dictation from the group in the conduct of his own business.

"The law has long been settled in this Commonwealth that intentional harm to the business of another like the harm caused by the defendants, acting in combination, to the business of the plaintiff is a tort unless justified as in the exercise of an equal and competing right, and that, in order to justify their conduct, the competing interest of the defendants must be direct and immediate and not indirect, remote or consequential."

The court then proceeded in its judging of the respective interests involved to say:

"If we are correct in supposing that the right to picket is subject, for the protection of paramount public welfare, to some balancing of the conflicting interests of the parties immediately involved, we have before us a case where, on the one hand, the contribution of the defendants' acts to the free interchange of thought in Fitchburg reaches the vanishing point, while on the other hand there is danger that the fundamental right of the plaintiff to work with his own hands to what he regards as his best advantage may be destroyed."

Respondent desires, in connection with the *Saveall* case to point out the substantial similarity of the character of the union in that case, in the *Hinton* case, *supra*, and in the instant case. In all, there was evidence in the record that the union was, to some extent made up of "proprietors" banded together for

purposes of furthering their interest, not only as employees, but additionally for the purpose of standardizing their trade practices to eliminate competition insofar as possible. There is the added factor in the instant case of the dual membership of many of these members in both the union and the dealers' association (R. 75).

Respondent in the foregoing discussion has stressed the fact that this Court has recognized and utilized the unlawful purpose doctrine.

It follows that application of this "unlawful purpose" test to the instant case in light of the "Little Norris-LaGuardia Act" involves a weighing of the conflicting interests of the parties and of the public interest. As more aptly stated by this Court in the *Ritter* case, *supra*, at 315 U.S., page 724:

"The economic contest (between employer and employee has never concerned merely the immediate disputants. The clash of such conflicting interests inevitably implicates the well-being of the community. Society has therefore been compelled to throw its weight into the contests."

Although in every instance of boycott and picketing it is obvious that one of the purposes is to injure the business of the person boycotted, yet where that is the sole purpose of the picketing, i. e., where there is a lack of redeeming objectives to outweigh this purpose in balancing the interests involved, the union conduct is beyond the pale of the Constitution and although "unionization" of a trade or industry is concededly and now traditionally a valid union objective, it is still another view of picketing which would

allow non-employee picketing to compel unionization of some in the industry and complete cessation of work by others. That is to say, that assuming it was a valid union end to completely unionize the trade and thereby force all individual entrepreneurs to affiliate themselves with the union or abandon their business that is not this case. The union here is grossly and unjustly discriminating and retaliating against respondent for not acceding to its demands upon him. Any action to compel a self operator to employ a man not of his own unqualified choice and further pay that man wages for work, regardless of whether it has any value or benefit to the self operator is discrimination and indeed paying homage to Caesar with a vengeance. Even though this condition were to be exacted of other self operators in the trade, which it was not, respondent seriously questions the legality and lawfulness of such a practice under the American system of free competition.

In this connection, respondent calls attention to the following language found in the *Lincoln Federal Labor Union v. Northwestern Iron & Metal Company*, 335 U.S. 525, 69 S. Ct. 251, 93 L. Ed. 207:

"There cannot be wrung from a constitutional right of workers to assemble to discuss improvement of their own working standards, a further constitutional right to drive from remunerative employment all other persons who will not or cannot, participate in union assemblies."

If the union is permitted to succeed in its aims to induce respondent as an individual doing business as an intreprenuer to comply with hours not of his

own choosing, but established between parties not contractually related to him, and in its further aims to punish him for being obdurate on that score by exacting extracurricular tribute, the time will not be far off when the small business man in the community will find that the advantages of individual enterprise will be outweighed by the burden of union compliance. It seems difficult, to say the least, to believe that the picketing here involved has "slight, if any, repercussions upon the interests of strangers to the issue." Quite to the contrary, overruling of the injunction in this case will stand as an inhibition in a free society of the right to work as long and as hard as one pleases for one's self alone and will open the door to union tactics which if carried on by an individual would be plainly labelled "extortion."

Respectfully submitted,

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